170(1) Purpose of Part III - Objectives

The objectives of the proposed regulations include working with the community on protection of residences, ensuring that residences maintain a form of protection while minimizing harm to the environment. The concern is that there is no such stated objective for the same consideration with industry contained in the same jurisdictions. The same community utilizing the mentioned residences also utilizes these industries, for both employment and service. Such recognition of adverse impacts afforded to residences should also be given to industry.

Add the following paragraph as a third paragraph: Adopt standards compatible with Federal Emergency Management Agency rules and U.S. Army Corps of Engineers administered legislation, regulations, and manuals for the reduction of flood damage and the maintenance of systems of flood protection and drainage which were established on September 9, 1975."

Add the following: "Recognize the role of private owners, including forestry and agriculture land uses which exclude the public as part of an overall design to achieve compatibility of uses between public and private holdings devoted to conservation and the natural resource based enterprises.

In regards to -170(1)(c), it must be recognized that floodplain aggregate is site-specific, and development of that resource is site-specific. Resource location is determined by river dynamics. Aggregate must be obtained from where it is located, hence the floodplain development of the industry. When addressing water-dependent uses for shoreline areas, floodplain aggregate mining should be considered as one of those uses, and assigned all afforded protections. Likewise, because of limited deposition of aggregate resources, especially in Eastern Washington, the development of floodplain resources should be designated as a high priority use.

Substitute for (i) "Single family residences and their appurtenant structures;": "Forestry and agriculture, where single family residential use is restricted." The proliferation of single-family residences on waterfront in the State of Washington has been a priority and a source of substantial appreciation in the hands of individuals. The single-family residential uses have been shown to be incompatible with the environmental objectives of the shell-fish industry and other public objectives for use of the shoreline. Consequently, a change of policy which would favor resource use over shoreline development and control of erosion at the single-family residential sites preserves the environment and avoids harm.

Ecology states that they will ensure a "limited reduction of public rights." Also, to "protect generally public rights of navigation and corollary rights incidental thereto." Define limited. Define generally. Ecology has incorporated such generic and general language, the specifics will be left up to their interpretation.

The cited statements in Section 170 are direct quotations from RCW 90.58.020. This quoted language, together with other quotes cited in section -170 (1), sets the broad policy of the state. Ecology's proposed rule sets standards for implementing these policies. It is not within Ecology's authority to revise the policy of the SMA.

In regards to specific suggestions for changes, general industry (except for water dependent industry) and mining specifically are not preferred uses under SMA policy. Gravel mining clearly is not a water dependent use. However, the fact that gravel resources occur in shorelines is recognized by the provisions for coordination with the GMA mineral resource lands provisions contained in the environment designation section (Section 210).

170(1)(c)(i)

Substitute for (i) "Single family residences and their appurtenant structures;": "Forestry and agriculture, where single family residential use is restricted." The proliferation of single-family residences on waterfront in the State of Washington has been a priority and a source of substantial appreciation in the hands of individuals. The single-family residential uses have been shown to be incompatible with the environmental objectives of the shell-fish industry and other public objectives for use of the shoreline. Consequently, a change of policy which would favor resource use over shoreline development and control of erosion at the single-family residential sites preserves the environment and avoids harm.

Single family residences (SFR) are recognized in the SMA as a priority use. The guidelines provide an appropriate amount of resource protection requirements applicable to SFR's to assure that the impacts associated with them are minimized.

170(1)(c)(i)

This subsection introduces some assumptions about the relationship between SMA policies and the decline of native species of fish and wildlife. The SMA should not be regarded as a substitute for taking control over technology used to find Chinook salmon in the high seas. It should not be a substitute for prudent harvest policies. It should not be a reason to fail to consider the impact of marine mammal policy. It should not be an excuse for failing to recognize the role of ocean conditions. The rules completely omit any reference to hatchery management and provide no rules for the regulation of hydraulic power generation. These areas ceded to other regulations. In this way, the proposed regulations are inconsistent. Rather than recognizing the federal interest in flood hazard reduction and ceding the regulation of diking and drainage to U.S. Army Corps of Engineers and Federal Emergency Management Agency, the regulations provide an additional overlay for Critical Area regulation under the Growth Management Act, Hydraulic Project Approval jurisdiction of the State Department of Fisheries, and generally fail to identify the means of coordination. It appears to be the objective of the regulations, by establishing a default mechanism, to encourage integration of regulations. It does not achieve coordination of government policies outside the Growth Management Act.

The State's salmon recovery strategy addressed Harvest, Hatcheries, Hydropower and Habitat. The adoption of these guidelines can only deal with the Habitat portion of the equation within shoreline jurisdiction. The loss of habitat has been clearly established as a contributor to the decline of salmon species and must be addressed as a part of the overall strategy. To the extent possible at the time they were written, these regulations have been coordinated with other federal and state programs addressing related land use issues.

170(1)(d)

The draft rule does not acknowledge the fact that well-planned and well-designed projects provide net environmental benefits. Instead, many proposed amendments consist of additional vague criteria that fail to advance the overall quality of environmental decision-making. The resulting slow down of the project can only serve to sadly limit the number of potential development or redevelopment projects that could have

provided real improvements in fish and wildlife habitat. Of primary concern is the manner in which the rule has failed to acknowledge the overlapping authorities of other regulatory entities and the impact that this overlap will have on efficient, high-quality project design and review. The new rule contains the novel concept that local government have a duty under the SMA to evaluate projects for their impact on "ecological functions" of shoreline areas - 170(1)(d) and 200(2)(c). Setting aside the legal question of whether this idea has any basis in the SMA itself, inclusion of this concept poses real implementation problems, because the idea of shoreline ecological function overlaps with the duties of other agencies to protect these same habitat functions in the same geographical areas. Ecology is well aware of the numerous existing federal and state regulations whose purpose is to encourage fish and wildlife habitat conservation and protection. Applicants must usually address habitat impacts with one or more federal or state agencies, e.g. NMFS, USF&WS, USACOE, Ecology, and/or WDFW. Directly or indirectly, each of these agencies requires rigorous review and mitigation for the perceived habitat impacts on ecological function of a proposed project. Adding a parallel review process by a local agency complicates the permitting process and muddles the decision-making process, without providing any more habitat protection. The result could be a nightmare of regulators competing against each other to regulate the same impact. This would not only decrease our ability to achieve the common goal of both providing for industrial uses and providing environmental benefits, but threaten to be a serious waste of public monies.

The Port recognizes that Ecology is unlikely to abandon the concept of shoreline ecological function after so many years of struggle and debate. The Port also accepts that local government should be a participant in decision-making where land uses have potential effects on aquatic resources. However, the participation should complement the expertise of state and federal resource agencies, not add a duplicative layer. Instead, Ecology should consider a proposal for how to coordinate project review. The local shoreline permit process is typically the first step, and detailed federal or state review does not begin until the local process is well along or completed. However, the Built Area Option contains a proposal, derived from the final 4(d) rule, which would restructure that traditional relationship as follows. A decision would be made at the pre-application stage of the process as to whether the project is primarily one which impacts upland land use, or one which primarily involves in-water work. Those projects that are primarily upland-type projects (and hence subject to review under the SMA and other development regulations) would be substantially reviewed first by local government agency for ecological impacts, while federal and state review would be secondary and less intense. The reverse would also be true: complex, in-water projects would be reviewed first and most completely by federal and state agencies, and the local government's review would be less strenuous, relying on the expertise of those other agencies. Of course, the Built Area proposal assumes that local government agencies have the internal expertise and capability to perform high-quality ecological review, but Ecology apparently has already likewise made this assumption.

Coordination of regulatory requirements is among the fundamental purposes of these guidelines. Ecology has engaged in a comprehensive effort to assure to the extent possible that the standards contained in these regulations are coordinated with the other regulatory programs applicable to the same area. Local government should also be able to further this coordination as specifically applicable to their area of jurisdiction. Among the purposes of the SMA is to assure that local government has a voice in regulatory processes and decisions that effect its jurisdiction. Full deference to federal and state systems may simplify the process but would remove local government from the process. The SMA is also the only such regulation that includes jurisdiction over adjacent upland as well as water areas and thereby provides a broader tool for protection of the shoreline.

170(1)(d)

The explanation of "protection and restoration of ecological functions" is poorly constructed and misleading. By definition ecological functions are much broader than can be measured by the needs or response of a single species. Broader shoreline functions and watershed processes should be emphasized here. There should be better linkage to the definition provided in (14).

Ecology does not believe this section ties ecological functions solely to the needs or response of a single species. This section is a broader objective statement that mentions the ecological functions effect on a species as an *example* of the impact of the state of ecological functions. Also, the definition of ecological functions in Section 020(14) applies wherever that term is used in the guidelines, including this section. Thus, we believe the policy objective regarding protection and restoration of ecological functions stated in this section is appropriate.

190(1)(b) Master program contents - Concepts

The use of the term `circulation' needs to be clarified. Is this being used synonymously with `transportation flow' or are you referring to hydrological circulation cells? Also, in Section 190(1)(b)(f), there are broader habitat concerns than just vital estuarine areas (i.e. wetlands, floodplains, riparian areas, etc...

The sections are direct quotes from the SMA (RCW 90.58), and cannot be changed in a rule. In the SMA, the term "circulation" refers to transportation flow.

190(1)(d) Shoreline environment designations

As drafted in Part III, this WAC will allow "different sets of environment protection measures" for each shoreline segment which will likely lead to more fish and shellfish habitat degradation. While the shoreline designation process may be convenient for shoreline and land use planners to parcel up the landscape, this approach does nothing to protect against adverse impacts and is inconsistent with RCW 90.58.020. Furthermore, there is no requirement to use the best available science in designating these areas

Environment designations have provided the "framework" for shoreline management in Washington State since its inception. It is not clear from the comment how the use of environment designations will lead to more fish and shellfish habitat degradation. Environments are required to be assigned consistent with the criteria listed in section 210(5)(b), which then trigger compliance with subsection (4) management policies for each environment. These management policies specifically address protection and restoration of ecological functions. Further, section 200(2) requires that local governments "base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available."

190(2)(a) Basic requirements – Consistency with comprehensive planning

I would argue otherwise with the statement "shoreline management is most effective when accomplished within the context of

comprehensive planning." If that was the case we would not have PTE. Within the context of comprehensive planning landscape is partitioned up into designated uses based on the lands ability to support a certain type of anthropogenic use. The concept of providing for ecological functions is foreign to this process and has not been adequately incorporated.

Ecology believes that protection of ecological functions can be adequately incorporated in the context of comprehensive planning. A fundamental purpose of developing this rule is to assure consistency between GMA planning and implementation of the SMA.

190(2)(a)

As important as mapping consistency is, broad consistency among planning objectives is critical. "Should be capable of implementation together ...." should read "Shall be capable of implementation together..." This internal consistency provision is extremely important.

The section is a direct quote from the RCW. Only the legislature has authority to amend RCW's.

190(2)(a)

I do have a major concern that many of the principles here overlap other rules and regulations, specifically those rules related to the Growth Management Act. I could not follow the section on "consistency" (WAC 173-26-190, 2(a)) and therefore do not trust it very much. The diagrams only added to the confusion; couldn't someone have done better for the general public?

The subject section was prepared with assistance from among others, the Department of Community Trade and Economic Development and local government planning officials charged with implementing Washington's GMA. The direct quotes from the GMA, its implementing rules, and ESHB 1724 are intended to clearly show the statutory basis for requirements that local GMA comprehensive plans and SMPs must be consistent.

190(2)(a)

There is a dichotomy in terms of how you have written things. The diagrams that you have clearly say that GMA is overarching Shorelines in one component of GMA. You acknowledged the reality in the laws. But when you read through the document, the sense that you get is Shorelines takes precedence and GMA is sort of out there somewhere. What I want you to address is how this proposed rule advances all, and I underlined the word "all," of the 13 goals of the GMA. It is clearly under GMA. There are environmental requirements, and in the Shoreline there are environmental requirements. But what you have here is this shoreline rule, is one component of GMA. So if you think this makes sense, it's got to make sense under a GMA justification and not just a shoreline justification. And to do that you need specifically to address each of those 13 goals.

Ecology tries to address the consistencies or inconsistencies of getting the two statutes to be in compliance with each other in WAC 173-26-190 2(a). Correctly stated, the legislature recognizes the GMA is the fundamental building block of regulatory reform. GMA provides the means to effectively combine certainty for development decisions, reasonable environmental protection, and long term planning for cost-effective infrastructure and orderly growth and development: GMA is intended to serve as the integrating framework for land use and environmental decisions. The fundamental flaw in the relationship of integrating SMA and GMA is demonstrated in the scope of these revisions. While the driving document of GMA attempts to integrate SMA into GMA, Ecology has taken the opportunity to exploit and expand the role of SMA outside the context and scope of an integrated SMA and GMA. As proposed, these revisions make land use decisions unilaterally for local governments from urban waterfront to "pristine" boundaries.'

Ecology believes that neither SMA or GMA are "overarching". GMA provides the framework for implementation of both and both must be fully complied with and implemented. The two laws are fundamentally consistent in purpose and intent. The provisions of the GMA at RCW 36.70A 480 requires compliance with the policy and provisions of the SMA. The guidelines are written to implement the SMA in the context of the GMA by providing for coordination between mandatory provisions and planning. It would be inappropriate for Ecology to address the other goals of the GMA as this is a task that the GMA assigns to local government.

190(2)(b) Basic requirements – Including other documents...

DOE does not adhere to the standard for incorporation by reference that it demands of local governments in approving SMPs that incorporate by reference. WAC 173-26-190(b) requires that any incorporation by reference be specific to a dated "regulation" and that the public has an opportunity to participate in the formulation of the regulations or in their incorporation in the Master Program.

In order to ensure that the local government SMP submittal is consistent with the policies of the SMA, Ecology must know what it is approving and what exactly constitutes the SMP for the subject jurisdiction. This requires local government, when incorporating by reference, to specifically provide Ecology a "dated" regulation.

190(2)(b)

What does it mean in the last line reading "supplement or add to the language in the chapter text." What "chapter text?" Where? Does this paragraph mean that anytime Skagit County alters its CAO that the DOE has also to review the language as part of a master program amendment? When Skagit County was writing its "aquaculture amendments" in the years following 1991, I called DOE to find out what previous amendments had been approved for the Skagit County Master Plan. Agreeing there had been some, DOE had no record of them. After Skagit County took more than two years just to write amendments, as I remember, it took DOE another year to settle out the fights over those amendments. Although the length of time was a result of intervention by other departments and interest groups, all CAO issues can trigger the same interventions. A requirement that the CAO must go through SMA process too can create huge staff time use and regulatory logjams.

The quoted text did not appear in the proposed rule. If Skagit County includes any part of its CAO in its SMP, and later wishes to "alter" such parts then the altered parts must be submitted to Ecology as an amendment to the SMP. Until changes are approved by Ecology, the original unaltered CAO provisions will remain in effect. The rule does not require that the CAO must go through the SMA process. It is at the discretion of local government to use CAO provisions to satisfy both GMA and SMA requirements. If a CAO is used to comply with SMA requirements, local governments must comply with all procedural and substantive requirements of the SMA and the guidelines.

190(2)(b)

You may wish to insert the approved policies developed produced through the watershed process of RCW 90.82.

The rule does not preclude the option of incorporating policies developed through the watershed process.

190(2)(c) Incorporating SMPs into other plans

I oppose the section that allows jurisdictions to prepare an SMP that's not an SMP by simply including all the provisions of the SMP throughout other ordinances and not in fact having an SMP at all. This will make it difficult to appeal SMPs.

Local governments are required to compile an identifiable SMP and submit it to ecology whether it is composed of wholly new material or parts of existing regulations. The document will be the subject of a formal review and approval process that includes clear opportunity for appeal.

190(2)(c)(i)

Add "and exemptions" - applicants need clear directions to apply for shoreline permits and exemptions.

Ecology has revised the language. The rule now reads "Clear directions to applicants applying for shoreline permits and exemptions."

190(2)(d) Multijurisdictional master program

Planning on a watershed or ecological basis is difficult at best and realistically, impossible for small communities.

While Ecology agrees that planning on a watershed basis can be difficult, it is not impossible. Recognition by small communities that they are part of and influence a larger watershed is occurring more and more often. At present, 38 out of the 62 designated Water Resource Inventory Areas (WRIA's) in Washington State are engaged in some form of coordinated watershed planning under RCW 90.82. These efforts involve many rural and small communities.

190(2)(e)(iii)(A) Master program contents – Statement of Applicability

Additional guidance should be added to this section so that it is clear as to how the SMA's provisions will be applied to all development and uses if a shoreline permit is not required.

Each local government has the responsibility for identification of a system of review that suits its particular development review system. Local government has a wide variety of permits and authorizations that they currently use to review for compliance with a wide variety of regulations such as building permits, clearing and grading permits, subdivision review, etc.

190(2)(e)(iii)(A)

The SMA requires shoreline substantial development permits for certain kinds of work and does not require or authorize local permits for other kinds of land use activities (except certain timber harvests in shorelines of statewide significance). The draft guidelines undermine this statutory distinction by providing for "letters of exemption," a new form of local permit, suggesting that local governments can impose case-by-case conditions on activities not requiring a substantial development permit rather than rely on rules of general applications set out in their master programs. Master program use regulations can be enforced as to activities that do not require substantial development permits through numerous existing tools and procedures, e.g. building and grading permits for development and forest practices approvals (see RCW 76.09.050(7), giving local government veto over DNR approval of forest practice activities that would violate a master program). Adding duplicative new permit procedures is inconsistent with the SMA and RCW 34.05.328(4). At most, the guidelines should authorize - but not require - letters of exemption for activities that are not subject to enforcement of applicable master program use regulations by other means such as other local permits, local veto over forest practices approvals, interagency agreements between local governments and state agencies, etc.

Please delete the following sentence: "Local governments have the authority to condition a project even though it is exempt from the requirements for a substantial development permit." We find it baffling that DOE would assert, without citing any legal authority, that the proposed regulations apply regardless of whether a shoreline permit is required.

The proposed rule requires local governments to condition exemptions from substantial development permits, even single family homes, but does not establish clear boundaries around what those conditions may involve. If Ecology intends these conditions to be discretionary in nature, this may require an amendment to SMA by the Legislature. We believe the rule should be clarified by placing boundaries around the type of conditioning allowed for consideration in issuing exemptions.

You indicate that you have the authority to regulate, even though you don't need a permit, without justifying the basis for which you have the authority to regulate over and above the Shoreline Development Plan. How would a county or local jurisdiction regulate that they weren't giving somebody a permit? It's unclear to me how you regulate without a permit process. My impression of that is that by not having a permit process you're saying we can regulate whatever we want to. And if you're going to expand the authority or the scope of authority under the SMP, I think you need to explain how you have that additional authority.

The "exemptions" provided for in the SMA are exemptions from the requirement to obtain a substantial development permit and are not exemptions from the applicability of the regulatory program of the SMA. Local government has a specific obligation under the provisions of the SMA to assure that all "development" is consistent with the provisions of the SMA and the local master program. The letter of exemption is a device local government has long used to demonstrate compliance with this requirement.

That all "development", as defined in the SMA, is required to comply with the SMA and the local SMP has been established and reaffirmed by the Shorelines Hearing Board and State Supreme Court. In Hayes v. Yount (87 Wn 2d 280, 1976) the Supreme Court stated "In the Shoreline Management Act of 1971 itself, the legislature and the people of this state recognized the necessity of controlling the cumulative adverse effect of 'piece-meal development of the state's shorelines' through 'coordinated planning.'

In *Hunt v. Anderson* (30 Wn App 437, 1981), the Supreme Court found that "All development and substantial development on the shorelines of the state must conform to the SMA.," and "it is immaterial whether a substantial development permit is required. The placing of a mobile home, the addition of a septic tank and drainfield, and the construction of a deck within the jurisdictional boundary of the Shoreline Management Act of 1971 constitutes development".

The master program is clearly established in the SMA as applicable to all uses conducted in the shoreline. The provisions of RCW 90.58.100 state that the master program "shall constitute use regulations for the various shorelines of the state." This fact has been confirmed by the State Supreme Court on several occasions including *Clam Shacks v Skagit County*, 109 Wn. 2d 91 1987 and *Weyerhaeuser v. King Co.* 91 Wn. 2d 721 (1977).

190(2)(e)(iii)(A)

RCW 19.85.030(1) provides: In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (a) If the proposed rule will impose more than minor costs on businesses in an industry; or (b) [if requested by the Joint Administrative Rules Review Committee]. . . . An agency shall prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. [the notice of proposed rule making]. DOE expressly concludes that a small business economic impact statement ("SBEIS") is not required for the proposed SMA guidelines because the guidelines are "rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party."

DOE does not intend to prepare a small business impact statement on the grounds that the revised guidelines are not directly binding on small businesses or other private parties. However, it should be recognized that the original DOE guidelines were directly binding on private parties during the interim between their adoption and DOE adoption or approval of the applicable local master program. RCW 90.54.140(2). DOE should reaffirm, in the text of the guidelines themselves and in other parts of the rulemaking file, that the amended guidelines are not self-implementing in local jurisdictions having previously approved master programs in place, but will apply to private parties and other project proponents only with respect to permit applications filed after implementing amendments to the local master program are approved (or adopted) by DOE.

If the courts ever were to hold that the guidelines are self-implementing in ways that directly bind private parties, DOE's decision not to prepare an SBEIS would be subject to challenge, which in turn would raise questions as to whether the guideline revisions were properly adopted. Therefore, DOE should do whatever it can to reinforce and document its position that the guideline revisions are not self-implementing or directly enforceable against private parties. The proposed rule directly contradicts this premise for declining to prepare an SBEIS when it requires SMPs to include language that makes each individual substantial development permit directly subject to the guidelines. At WAC 173-26-190(2)(e)(iii)(A), the proposed guidelines provide: "All master programs shall include the following statement: "All new development and uses occurring within the shoreline jurisdiction must conform to chapter 90.58 RCW: The Shoreline Management Act, Chapter 173-26 of the Washington Administrative Code, and this master program." Even without this language, it is preposterous for DOE to maintain that the proposed rules are merely rules governing intergovernmental relations with no effect on private property, small businesses, and regulatory decisions made by municipalities.

Unless DOE will concede that the SMA guidelines are strictly advisory recommendations that are not minimal requirements for approval of SMPs, there is no escaping the need for an analysis of impacts to small business, which are likely to be substantial and more than minor. Small businesses that will be directly and substantially financially include those operating in the areas of commercial and industrial development; construction or remodeling of residential development; bulkhead construction, repair, or replacement; pier and dock construction; real estate; marinas and shipyards; dock and pier repair/construction; real estate, and others.

The requirement to prepare a Small Business Economic Impact Statement comes from RCW 19.85. However, that statute excludes any rule that is defined by RCW 34.05.310(4) as exempt from those requirements. That includes "rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party".

Ecology agrees that the rule is not self-implementing or directly enforceable against private parties and has removed the phrase "Chapter 173-26 of the Washington Administrative Code" from the following sentence: "All new development and uses occurring within the shoreline jurisdiction must conform to chapter 90.58 RCW: The Shoreline Management Act~~, Chapter 173-26 of the Washington Administrative Code~~, and this master program."

As revised, the language directly implements the provisions of RCW 90.58.140 (1), which states that "A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

The guidelines do not directly apply to project proponents or property owners; they will apply to cities and counties that are then required to revise their master programs. The requirements of the new guidelines will only apply to property after a local master program is prepared by a local government and approved by the state. We therefore stand by our decision that an SBEIS is not needed.

190(2)(e)(iii)(B) Condition use and variance provisions

There should be additional guidance added to this section so that the conditional use and variance provisions are not subjective and are based on best available science, including data to demonstrate that proposed mitigation measures are effective.

The criteria for review of conditional use permits and variances are contained in WAC 173-27-160 and 170. While it is not possible or desirable to completely extirpate subjective judgement, these provisions require that approved projects should be found to be consistent with the SMA and the local SMP and have no significant adverse environmental impacts.

190(2)(e)(iii)(C) Administrative permit review and enforcement procedures

This section provides no detail on how substantial development permits are to be administered, and states, in reference to RCW 90.58.140(3), that the permit review system is established and administered by the local government. The implication appears to be that the local government could establish a permit system requiring a public hearing for some categories of substantial developments, and require only administrative review for other, smaller scale developments. We would favor having this option for administrative review available. It would be helpful to clarify whether this is an option for local governments developing master programs.

The minimum standards for processing a Substantial Development Permit are established in RCW 90.58 and WAC 173-27. Local government may adopt different administrative provisions so long as they comply with the minimum requirements.

190(2)(e)(iii)(D) Documentation of project review actions and changing conditions

Documentation will make these Master Programs more effective in shoreline resource protection, but for local government and resource agencies already short staffed, who is really going to be able to do this?

Ecology understands and appreciates the workload that exists for local government and for resource agencies. However, in any regulatory program it is important to understand the effects that permit decisions and cumulative effects

have on the resource being protected. Without such information, it is difficult to know how effective the permit reviews really are. Ecology will assist local governments and resource agencies by provided guidance on how to document actions and evaluate cumulative effects.

190(2)(e)(iii)(D)

This section should be modified to require a mechanism to document and track shoreline exemptions.

The term "project review actions" in this section is intended to include both permitted activities and shoreline exemptions.

190(2)(e)(iii)(D)

The inability of a local government to conform to this provision of master program contents is not addressed. What are the repercussions to the shoreline applicant?

This provision is an obligation of local government and should not have direct repercussions on individual applicants.

190(2)(e)(iii)(D)

Add this paragraph: "Advanced consultation with affected Indian tribes should include a thorough review of the impact of development on tribal resources." Tribes are not local governments and do not fall under any provision referencing them.

The State Environmental Policy Act, Shoreline Management Act, and the Growth Management Act require opportunity for tribal and public input. See RCW 90.58.140(4), RCW 36.70B.110, WAC 173-26-100(3), WAC 173-27-110, WAC 197-11-340(2)(b), WAC 197-11-360(3), and WAC 197-11-455(h).

200 Comprehensive process to prepare or amend SMPs

Small communities do not have scientists on their staffs. The draft includes many regulations that require scientific assessments not only in developing the new master programs, but also in reviewing permit applications. Small local governments cannot reasonably comply with requirements such as those in WAC 173-26-200 and throughout the draft. We do not have staff capacity to do such things as "identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them" (page 57), and then defend our permitting decisions with scientific data.

Ecology understands that smaller jurisdictions will be challenged to prepare SMPs under the new guidelines without technical guidance materials and adequate funding. Ecology continues to seek secure funding for local use.

200

The Comprehensive process here does not consider in its preferred uses the possibility that forest and flood plain agriculture may be part of the design of a shoreline which minimizes environmental impact and maximizes shoreline ecological functions without aiming to completely restore unaltered functions. Adaptive management, such as the engineering and design guidelines for landscape planning and vegetation management at floodwalls, levees, and embankment dams could be recognized within the regulations as an approved use and a part of the shoreline policies included in amending SMPs. The document EM1110-2-303(1 January 2000) should be added as an appendix to the record.

Forestry and agriculture are identified as uses. Flood hazard reduction measures are addressed in section 220(3) and allow for such measures when they increase ecosystem-wide processes or ecological functions.

200(1)

Require virtually every municipality within the state to comply and rewrite their SMPs.

This statement is not necessary in the rule. Under the SMA, all local governments with shorelines are required to prepare SMP's within 2 years of Ecology's adoption of new guidelines.

200(1)(b)

This subsection mentions a condition requiring SMP amendments if there are "substantial changes" in shoreline use without defining what substantial changes are. Without a definition, it is likely that cumulative impacts will occur without analysis and mitigation.

In this context, "substantial" is adequately defined in a dictionary. Cumulative impacts will be addressed in the "full build-out" analysis required in section 200(3)(d)(iii).

200(2)(a) Use of scientific and technical information

The term "best available science" needs to be defined. For consistency, we suggest use of the definition being considered by the Washington State Department of Community, Trade, and Economic Development to implement RCW 36.70A.272. Since the Best Available Science Rule has been adopted by CTED and will become effective as of August 27, 2000 will there be a reconsideration of the use of the term Best Available Science (BAS) in the new draft? Replace "scientific and technical information", which is vague and may be old and inaccurate, with BAS as defined in the GMA.

The final rule should require use of best available science according to the recently updated rule from CTED. Absent rigorous criteria and peer-review, jurisdictions will employ self-serving pseudo-science at the expense of the purposes of the SMA.

Ecology coordinated with CTED during the development of the BAS rule by CTED and was aware of the provisions of the BAS rule. To distinguish between requirements of the GMA and SMA more clearly, Ecology has removed the reference to "best available science" in Section 200(2)(a) and referenced "best available science" only in the section on critical areas [Sections 200(2) and 300(2)].

200(2)(a)

"Local governments shall include best available science." You have already heard this statement before. This is in their current SMP. Only they changed "should" to 'shall" with this new proposal. Who will pay for the engineering and environmental assessments? It doesn't say.

Ecology is continuing to support adequate funding from the legislature to assist local government in developing local inventories and other SMP planning.

200(2)(a)

The second full paragraph states, "Local governments are encouraged to work interactively with neighboring jurisdictions…" The word encouraged is vague, local governments should be required to work with neighboring jurisdictions including affected Indian Tribes.

The requirements of the SMA and the provisions of 173-26 require consultation with adjacent jurisdictions, tribes, state agencies, etc. This provision encourages an interactive approach to this consultation as a more effective means of complying with this requirement.

200(2)(a)

Clarify that incompleteness and non-current status of best available information are not grounds for exclusion. Emphasize obligatory documentation by local jurisdictions of their search for most current and reliable data including that solicited as public input.

Ecology believes that RCW 90.58.100 and WAC 173-26-200(2)(a) already contain these requirements.

200(2)(a)

At a minimum, local governments should seek standard sources of information relevant to their respective analysis and generally available. Often this must include data or information produced 'outside' the department (e.g. WDFW sources, OCD sources, MRCS sources, PSAT sources etc ...). `Produced by' WDOE should not be the limiting standard here.

The intent of referring to technical assistance materials produced by Ecology is to assure that all local governments are playing off the same sheet of music. The paragraph immediately above the cited section explains that local governments should "make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science."

200(2)(a)

This section seems very demanding and likely unworkable. Scientific and technical information should be credible, and where possible, peer-reviewed and developed in accordance with processes general accepted by the scientific community. The references to integrated use of social science and the environmental design arts is confusing. Additionally, under the textural quote of RCW 90.58.100(l)(f) the reference to "modem" scientific ... should probably be "modern". Also, it seems confusing to be using generous quotations from the RCWs in WACs.

The referenced sections in the Act are the statutory basis for this section. "Modern" may read in duplicated copies as "modem" because of blurred printing.

200(2)(a)

Local jurisdictions "should" [or "shall" in -300(3)(g)] "be prepared to identify... [r]isks to ecological functions associated with master program provisions." Documenting such risks not only encourages an environmental appeal, but also provides a template for appeal. Further, the Guidelines have been drafted with complete disregard for case law on the legal obligations of local governments under the ESA. Local governments are not obligated to prevent "risks to ecological functions," but would be required by the Guidelines to do so.

Because protection of ecological functions is a primary objective of the rule, Ecology included several provisions, including provisions to identify risks to ensure master programs fulfill this objective. The objective to protect ecological functions is not a standard of the ESA, but rather is a manifestation of the SMA's policy of protecting the land and its vegetation and wildlife, and the waters of the state and their aquatic life. Local governments are required to carry out this policy of the SMA.

200(2)(a)

The last paragraph should be modified to require that local governments assess and mitigate for impacts to potentially Threatened and Endangered Species.

Section 200(2)(c) addresses ecological functions in general, which would include functions needed for T&E species, when appropriate.

200(2)(b) Environmental evaluation and regulatory response

It states, "Local governments are encouraged to undertake local monitoring and periodically update master program provisions…" This language is vague and suggests monitoring to be a voluntary action. It also removes any requirement for adaptive management of which monitoring and updating are a part. The effectiveness of any SMP will depend on the adaptive management system that is incorporated into the program. How effective SMP have been is unknown. Our observations would suggest the program has been ineffective. Adaptive management procedures provides a means to evaluate programs and bring about change, eliminating portions of a program that are ineffective and expanding portions that are effective. Establishing an effective adaptive management system should be required.

All SMPs must include provisions to track all exemptions. SMPs must ensure that individual and cumulative effects of the exemptions get remediated to protect or restore ecosystem function.

The provisions of Part III apply as minimum requirements to more than 200 incorporated cities and all 39 Counties. These jurisdictions encompass a wide range of situations related to amount of territory within the jurisdiction, growth rates and environmental settings. Prescribing a narrowly defined scientific adaptive management strategy within the guidelines for every jurisdiction is likely to yield a strategy that is appropriate for few or none. Given the range of goals and policies of the SMA and each local jurisdiction, it is questionable whether true adaptive management is an appropriate tool for shoreline management generally. Because of this, the provision encourages local government to monitor trends and evaluate whether the SMP is effective in accomplishing its goals and policies.

200(2)(c)

SMPs shall address the applicable ecosystem-wide processes and individual ecological functions identified in the ecological systems analysis described in WAC 173-26-200." This is new language. Then they are indicating that we have to restore these systems if damages. That alone will pretty well wipe out our city budget and any further development West of Surf Avenue.

The requirement to address the "applicable ecological processes" is intended to clarify that local governments don't need to address processes that don't take place within their jurisdictions. For example, Eastern Washington communities don't need to address marine processes. The guidance materials will help with the amendments and Ecology is seeking funds. Requirements for restoration are on a comprehensive basis over time and are not necessarily directed to restoring pristine conditions.

200(2)(c)

To ecological functions and PFC, SMPs should consider and protect the physical and chemical criteria the Services and EPA identified in the Man Tech Report (Spence et al 1996) and biological criteria such as those from Karr. Quantitative criteria will make the SMPs more comparable, easily reviewed, and understood.

Measuring physical criteria would be an enormous task. Ecology believes it would be better would be to translate physical criteria into planning and design standards during the analysis phase as the guidelines indicate.

200(2)(c)(i)

The term "Ecosystem-wide" fluvial, current, and wave processes that form habitats is subjective. Ecosystem-wide could be interpreted to be within the particular shoreline drainage basin, the watershed, the northwest region, or beyond.

This provision is general guidance that explains the policy of the SMA. The specific provision is appropriately general as it must address the full range of situations on a statewide basis. Specific inventory of conditions on a jurisdiction basis is

required. These form the basis of each jurisdictions SMP's. It is appropriate and necessary that a jurisdiction understands the broad environmental context beyond its borders, if only generally.

200(2)(d) Preferred uses

The SMA establishes preferred and priority shoreline uses. Preferred uses either prevent environmental damage or are water-dependent. The first listed priority use (one that can alter shoreline natural condition) is "single family residences and their appurtenant structures." However, the rule establishes a new priority scheme, one in which shoreline areas are reserved first for protecting and restoring ecological functions, next for water-dependent uses, and third for water-related and water-enjoyment uses. Only then does the rule reluctantly allow for single-family homes, such that they are located where they will not impact ecological functions or displace water-dependent uses. So long as single-family homes prevent environmental damage, the Act deems them a preferred and priority use. By severely restricting single-family homes and their appurtenant structures, the rule undermines local flexibility and threaten private property rights. Ecology has no authority to change the SMA policy about SFR's.

DOE may not diminish the priority shoreline use status of residential structures that is granted by the SMA. The SMA identifies single-family residential housing as a preferred use in the shoreline environment, and exempts single-family construction from permitting requirements. The proposed guidelines attempt to restrict both the preferred use status of residential development and limit its exempt status. See, e.g., proposed rule: p. 27 ("where they are "appropriate"); p. 71

Under the SMA single family homes were a priority, but under this set of guidelines, they definitely are not. It says shoreline areas were reserved first for protecting and restoring ecological functions. I'm not saying that that's bad, but that wasn't the intent of the SMA, and then next it was for water dependent uses, third for water related and water enjoyment uses and then, and now it finally will allow single family homes. That's not what it says under the SMA, and it also states under these guidelines so long as single family homes prevent environmental damage they are deemed to be a preferred priority use. I don't know how you could ever get the necessary permits as I understand the process in getting a letter of exemption to not have some impact on the environment if you are putting in a single family home. I think that you need to go back to the drawing board.

It is true that the SMA establishes preferred and priority shoreline uses, and that preferred uses either prevent environmental damage or are water-dependent. It is also true that the first listed priority use (one that can alter shoreline natural condition) is "single family residences and their appurtenant structures." However, Ecology's priority list is derived from court cases that have clarified the important distinction between preferred and priority uses.

Although single family residences are the first use listed in the sentence, the Act does not give them precedence over the other uses (water-dependent uses, public access) that are listed. In fact, residences are probably subservient to the other priority uses because residential uses are not dependent upon a shoreline location. The SHB has held that, in the limited instances where development of the shoreline is authorized, uses which are either inherently compatible with the natural environment or those which are unique or dependent upon shorelines locations (such as ports) are preferred.

200(2)(d)

The proposed rule restricts single-family home placement by allowing local governments to locate single-family residential uses where they are "appropriate" and can be developed "without significant impact to ecological functions..:" The terms "appropriate" and "significant impact" are not defined, and presumably will be determined by DOE staff during review of local SMPs.

Specifically, the guidelines ask local governments to identify areas appropriate for single family homes, using the environment designation criteria established in subsections 210 and 310. All determinations made by Ecology staff must be made in consideration of such criteria and the requirements of the SMA and the guidelines. Also, see definition 020(47) regarding "significant ecological impact."

200(2)(d)

Regarding the concept of water-dependent uses, the rule should be specific that factors such as navigation restrictions or commercial unfeasibility will be allowed consideration in appropriate circumstances. Some waterfront properties, even if they are in a high intensity environment, are not able to support a water-dependent use due to factors such as shallow water depths, access restrictions or a lack of upland infrastructure. In instances such as these, the guidelines need to contain enough flexibility for the local jurisdiction to allow nonwater-dependent industrial or commercial uses. This flexibility will allow these sites to be used for industrial or commercial in-filling, rather than forcing these uses into other less appropriate areas. This flexibility, if coupled with the concept of "use compatibility" put forward in Section 210(3) of the rule, will serve the public's interest in good shoreline planning.

The management policies of the "High-intensity" environment [210(4)(d)(ii)(A)] specifically address nonwater-oriented uses as follows: "Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline."

200(2)(d)

The SMA expressly identifies 7 expressed policy preferences (RCW 90.58.020). Salmon and the ESA are not among them, though your new regulations are designed expressly to advance that DOE policy preference. When defining what elements must be included in a local shoreline plan the legislature identifies 7 mandatory ones, and one discretionary "bushel basket" element (RCW 90.58.100[2]). Where the legislature limits its own fish and wildlife concern to "vital estuarine areas," (RCW 90.59.100(2)[f]) DOE uses non existent power to subordinate all other legislative SMA goals and policies to the welfare of fish, purporting to usurp the local "discretionary" power delegated to counties and cities under RCW 90.58.100(2)[I], making the priority of fish mandatory.

The seven policy preferences referred to relate specifically to shorelines of statewide significance. The general policy of the SMA "contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life[.]" The Supreme Court has held that the SMA must be broadly construed to protect the state shorelines as fully as possible. *Beuchel v. Dept. of Ecology*, 125 Wn.2d 196 (1994). The rule simply recognizes that species which are so depressed as to be threatened or endangered require special attention if they are to be protected "as fully as possible." Provisions in the rule which relate to listed species do not diminish the protection for non-listed species.

200(2)(e) Environmental impact mitigation

This section ignores any assessment of cumulative impacts and subsequent mitigation to mitigate for these impacts.

Mitigation for cumulative impacts is addressed in 173-26-200(3)(d)(iii).

200(3) Steps in preparing and amending an SMP

The steps in preparing and amending a master program include an inventory of shoreline conditions, and analysis of conditions and addressing of special topics. Later an informal review with state agencies, tribes and local jurisdictions is recommended. The idea of local government performing these inventories without technical assistance is feasible because state agencies probably will not have much time to help them unless more staff are added for technical assistance.

Ecology will prepare guidance materials after adopting the rule to provide technical assistance. Ecology is seeking funds from the legislature for inventory and analysis work.

200(3)(a)

Part 7 of the process flow chart should require a review by the listed agencies, including tribes.

It is not clear how Tribes will find out which approach local governments will choose to develop new or amended master programs. The WAC should be modified to require a copy of the declaration notice to be sent to affected Indian Tribes.

The specific requirements for consultation for both state and local government are contained in Part II of Chapter 173-26 WAC. The flow chart shows this required consultation under Step 1.

200(3)(b)

I applaud the assurances of public involvement in the process of updating SMPs

Comment noted.

200(3)(b)(ii)

"Before undertaking substantial work, local governments shall notify applicable state resource agencies, public utility districts, and the Washington State Department of Transportation, to identify state interests, ..."

Ecology has amended the rule to remove the word "resource" in front of agencies, so agencies such as DOT would be included. The rule now reads: "Before undertaking substantial work, local governments shall notify applicable state ~~resource~~ agencies to identify state interests, relevant regional and state-wide efforts, available information, and methods for coordination and input."

200(3)(c) Inventory shoreline conditions

The process overview for amending a master program in this and -300(3)(c) could be improved by allowing a public review of the inventory data prior to finalizing an analysis of shoreline conditions. Participation in these forums by local watershed and salmon recovery planning groups and marine resource committees may improve the body of scientific information and connectivity of the shoreline resources with the water and biological resources interacting with them. This may also help educate the public on the complexity of the issues and increase acceptance of the final master program and compliance with its provisions.

Public review is not only allowed, but encouraged throughout the SMP update process. This comment is a good suggestion for incorporation into Ecology's update of the Shoreline Management Guidebook, which will provide local governments specific methodologies and procedures for updating local SMPs.

200(3)(c)

All jurisdictions should be required to develop baseline inventories of their shorelines and develop a monitoring process to determine if their SMP is properly addressing shoreline protection. The inventories must be based on recent data, not previously collected data. The state should not be required to fund the inventories.

The City of Federal Way understands the potential usefulness of inventories of environmental conditions, having recently completed an inventory of wetlands located within the City and its Potential Annexation Area. That limited inventory, however, cost the City approximately $35,000, and did not include a full inventory of local streams (estimated to cost an additional $35,000). The shoreline inventories that would be required under the proposed amendments require a greater quantity of information for the properties within shoreline jurisdictions, and would therefore likely be even more expensive. Without funds, the work cannot be done.

If the Coastal Zone Atlas is not be updated, why? If it is not to be updated, then what is meant by inventory the shoreline? This was also done, in Skagit County at least, in the 1970's. The cost of locally correcting the volume could be huge.

A list of minimum types of information that should be collected is provided within this sub-section. This list is extensive and many of the items would consume an unreasonable amount of time and fiscal resources. For example, determining the location of structures, the amount of impervious surface, vegetative characteristics and the location of shoreline modifications on more than 300 miles of shoreline would require staff, fiscal and time resources that Island County is not in a position to provide. In order to collect this information, Island County will require significant financial assistance from the DOE and/or the Services.

Ecology agrees that inventory should be based on the most current inventory information available, but believes the requirement that local governments use existing information is an adequate minimum standard. Many local governments will have access to substantial existing information, so it would not be necessary for all local governments to gather new information.

Ecology acknowledges that cost is a significant issue in meeting the inventory requirements of this rule. Path A is designed to minimize cost by relying on existing information. We believe there is a substantial amount of useful current information readily available for use in preparing SMPs. Ecology will focus resources on improving access to available information. There is also a great deal of watershed-related inventory information and information collected as part of GMA planning.

200(3)(c)

"Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments." Question: What if the DOE disagrees with how we demonstrated our inventory? Then what. It isn't spelled out except that they are giving themselves the authority to tell us to go back to the drawing board. At our cost.

There is a formal process for resolving disagreements in 173-26, Part II. However, Ecology expects that Ecology will be working with most local governments throughout the process of preparing inventories, which should reduce disagreements.

200(3)(c)

Local governments should not be expected to inventory or regulate shoreline uses and activities on a scale beyond their size and borders. While these guidelines make laudable efforts to encourage planning on a "watershed" and "ecological" scale, it is not reasonable to expect most local governments

to accomplish a task that even large agencies with expertise cannot undertake.

There is considerable overlap between the shoreline inventory and analysis required and the watershed assessment work that will be done for salmon conservation planning. However, the watershed assessment is phased, with a coarse scale assessment first, followed by a detailed inventory over the next four years. The SMP update will only be able to benefit from this work if the timeline is extended to four years or substantial funding is provided to accelerate the schedule.

Local government cannot regulate shoreline uses and activities on a scale outside their jurisdiction.

The intent of encouraging local governments to use watershed-scale information is that the resulting plans will have a stronger scientific basis because they reflect the environmental context in which their shorelines exist.

Ecology will support coordination between watershed assessment and shoreline inventory and analysis. Ecology agrees the schedule for compliance should be extended and will support request for statutory changes to extend the timeline.

200(3)(c)

When preparing the shoreline inventory, a collection of available information is encouraged and should be coordinated with other state-wide inventory and planning efforts – to what extent will WSF resources be required by Ecology or the local government?

To the extent WSF has available information, Ecology expects this information would be provided, where appropriate.

200(3)(c)

Inventory shoreline conditions. "... Contact the department to determine information sources and other relevant efforts. Project proponents may depend on this inventory when applying for development permits or exemptions."

These guidelines are used by local governments to prepare SMPs and do not cover permit review procedures. Determination of adequacy of inventory information must be made at the permit level. In some cases, inventory-level information will be adequate for project review, but in others it will not.

200(3)(c)

Inventory information should include historical aerial photographs and an historical analysis of them to determine historical condition, which can be used for restoration and mitigation purposes. Historical analysis could shed light on issues of concern and shoreline ecological systems.

Aerial photos are an excellent source of information about historic and current use. Ecology expects local governments to use them in the inventory and analysis steps of SMP preparation.

200(3)(c)

Will an inventory be required before the development regulations are developed or can a jurisdiction proceed with developing regulations before the inventory is done? That way the issues will be looked at through scientific methods rather than case-by-case. There is a time for that, and that may be at the inventory with the designation stage. I questions whether inventory should influence the development regulations or should it be the other way around?

The inventory must be performed early in the process to provide the base information necessary for analysis and regulation preparation.

200(3)(c)

This inventory process needs to include utilities and utility corridors. Recommendation - Add the following language: (i) Shoreline and adjacent land use patterns and transportation and utility....(iv) Existing and potential shoreline public access sites, including public rights-of-way and utility corridors.

Ecology has amended the rule as suggested. The text in (i) now reads: "Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, and vegetation and shoreline modifications in shoreline jurisdiction." The text in (vi) reads: "Existing and potential shoreline public access sites, including public rights-of-way and utility corridors."

200(3)(d) Analyze shoreline issues of concern

It is unclear if the 200 ft. shoreline management jurisdictional limit has been altered with requirements for vegetation conservation and requirements to "ensure that master program provisions protect the shoreline processes that are critical to creating and sustaining the widest range of shoreline functions." Requirements such as "assess the ecosystem-wide processes to determine their effect/impact on shoreline systems and their individual functions" and "develop the specific master program provisions necessary to protect and/or restore ecological functions and ecosystem wide processes," (page 31) extend the reach of Shoreline Management far beyond the shoreline jurisdiction and if interpreted broadly could prevent essentially all future shoreline development.

The jurisdiction of the SMA is established in RCW 90.58 and is not changed (and cannot be changed) by the guidelines. The analysis steps in the rule are intended to provide local governments adequate information to write SMPs that consider the broad ecosystem-wide context in which their shorelines exist.

200(3)(d)(i)

You're establishing an impossible legal standard for local government and local homeowner. It stays, "The Shoreline Master Program has to ensure protection of shoreline process critical to creating and sustaining the widest range of shoreline functions." I am not sure we can write a rule that will do that.

The statement is a planning provision and is not applied permit-by-permit. Ecology has removed the term "the widest range" because it could be interpreted overbroadly. The rule now reads: "Local governments should ensure that master program provisions protect the shoreline processes within the subject jurisdiction that are critical to creating and ~~sustaining the widest range of~~ shoreline functions."

200(3)(d)(i)

How on Earth can we ensure no degradation to the environment without putting a moratorium on everything? That's going to take us right into court.

Ecology believes it is possible to develop shorelines without degrading the environment. In some cases this means development will include an element of restoration. In other cases, development can be sited to avoid impacts, or when they are unavoidable, impacts can be mitigated.

200(3)(d)(i)(A)

Add the paragraph: "Soil conditions that impact the ecosystem. Identify the anthropomorphic changes in soil composition that can adversely impact the soil-dwelling microorganisms essential to the particular ecosystem and develop and implement plans that correct these changes."

Soil and soil-dwelling microorganisms are encompassed under the definition of "ecological functions or

shoreline functions." They are also encompassed by the requirements of "shoreline ecological systems" in WAC 173-26-200(3)(d)(i).

200(3)(d)(i)(C)

".... The characterization of the shoreline ecological systems may be achieved ..."

Ecology has amended the rule. The language now reads: "The characterization of shoreline ecological systems may be achieved by using one or more of the approaches…"

200(3)(d)(ii)

"If the jurisdiction includes a harbor area or urban waterfront with intensive uses or significant development issues, work with the Washington State Department of Natural Resources, Washington State Department of Transportation, and port authorities to ensure consistency with harbor area statues and regulations."

The guidelines require that the Washington Department of Transportation and other agencies with an interest in harbor areas will be consulted during SMP preparation.

200(3)(d)(iii) Cumulative impacts

The full build-out analysis will require local governments to produce a comprehensive vacant land inventory. That will be no small task. This citation requires that local governments "…should project the ultimate allowed full build-out condition for existing and proposed master program provisions being considered…". Such requirement, constituting an "unfunded mandate", will be financially exhaustive for any local entity undertaking the task. As has been the practice, the financial burden may be passed to applicants seeking approval for a shoreline use. This would then force a single applicant or industry to carry the cost burden of study for the benefit of society, of society's cumulative impacts. This would be (and has been) an unfair hardship to such individuals. The proposed regulations should clearly outline the financial responsibility and revenue resource available to governments who are being placed under the burden of these regulations.

Both paths require local governments to condition development and set standards in the current SMPs to account for "cumulative impacts." In other words, they must evaluate the possible impact from "maximum build out" under potential regulations and incorporate limitations in those regulations to prevent any damage to habitat that is in a "proper functioning condition" (PFC) at that level of development. Of course, there is no guarantee that "maximum build out" will ever be achieved, or that technology will not provide additional solutions prior to "maximum build out" being completed. Limiting current use of property based on speculation gives the appearance that the agency's actual motivation is to stop shoreline development at all cost, regardless of the likelihood of actual environmental impact.

Local government shall be required to conduct an analysis that will inventory current shoreline space and to then calculate future shoreline demands and needs. If the intent is to require a similar analysis as that which is listed in RCW 36.70A.215, commonly referred to as a buildable lands analysis, this task would be formidable, expensive and extremely limited in its functional use as a planning tool. While it is recognized that an inventory of current conditions is valuable, projecting future demands and needs of shorelands is an exercise in futility given the number of very broad social, economic, geographic and demographic assumptions that would need to be made. Furthermore, shorelines are not urban growth areas. Urban growth areas are assigned zoning and densities in order to encourage growth. Zoning, densities and boundaries of the urban growth area are modified over time in order to adjust to shifting population trends. An analysis of future demands along the shoreline should not be used as a means of establishing shoreline environment designations. Environment designations should be based on existing shoreline conditions.

Population is going down in this watershed. Check OFM. I think it's over a dozen rural counties in this state, population is going down, or at least flat if not going down. Is it much threat from incremental development cumulative impacts? It is unrealistic to project the "ultimate full build out condition" and assess and mitigate the cumulative impacts in the local master programs. In Raymond shoreline development has vastly declined over the last fifty years with further decline a likelihood. We could possibly project development in five year increments but no longer.

DOE's guidelines may require mitigation for construction of single-family homes and other developments for speculative impacts projected to take place at some time in the future when 'full build-out' occurs. However, the GMA only requires environmental analysis for community development projected over a 20-year time span. By superseding GMA requirements, DOE has exceeded its legislative mandate.

A full build-out analysis of areas within shoreline jurisdiction, for both the existing SMP and any proposed change, is important for understanding how the proposed changes to an SMP will affect shoreline areas. This analysis is not such an unusual task. Many cities and counties conduct such an analysis when preparing new, or significant changes to their comprehensive plans. Ecology believes the requirement to assess cumulative impacts is important to understanding the impacts of master program-level decisions.

Cities and counties have the greatest familiarity with their region, and thus are the appropriate entities to undertake this effort. Ecology appreciates that this will be a difficult task for some jurisdictions, and will be offering guidance in how to undertake that assessment. In addition, state agencies (Ecology and others) will help to the extent they can. It is unlikely that jurisdictions would pass on the cost of this inventory to permit applicants.

In terms of the appropriate timeframe, the full build-out analysis should cover whatever time-frame is covered by the SMP, and evaluate full build-out as allowed by those policies and regulations. It will also help in assessing cumulative effects.

Regarding the comment about statutory preference for single-family residences and exempt status, see the responses to comments on section 190(2)(e)(iii)(A) and (D).

Regarding the comment that full build-out cannot be assessed in an area where development activity has declined, if development is still allowed by the master program, then the ultimate build-out authorized by that SMP can be assessed and analyzed.

200(3)(d)(iii)

*Uses vague language that master programs " **should** address cumulative impacts " but **shall** include provisions to assess, minimize, and mitigate cumulative impacts.*

The provision is intended to allow some flexibility. Local government should fully address cumulative impacts in the process of developing SMPs, however there may well be circumstances where this is not possible or the best approach. The provision goes on to assure that in those circumstances where it has not been addressed in developing the SMP, the implementation process will address the issue.

200(3)(d)(iii)

Ecology must give more attention to the identification and restoration of cumulative effects. Many estuaries are filled, and severely degraded. Rivers are moved, dammed, straightened, channelized, built out, and severely degraded. SMP must identify restoration goals and implementation plans for those goals.

Ecology believes the new guidelines provide an appropriate level of attention to cumulative effects. Regarding restoration goals and plans, there are several places within the new guidelines where this is addressed. For example, see 173-26-220(5)(b), Shoreline Vegetation Conservation – Principles, and 173-26-220(3)(b), Flood Hazard Reduction – Principles.

200(3)(d)(iii)

There should be objective standards at the state level to determine minimal levels for which cumulative impacts need to be assessed. Citizens should be able to invoke the review of cumulative impacts.

What constitutes cumulative effects varies dramatically depending upon local circumstances. Objective state-wide standards are notoriously difficult to set. Ecology has opted to rely on the understanding that cities and counties have of cumulative effects based on their experience in administering the State Environmental Policy Act (SEPA), which also includes that concept. We do not agree that citizens should be able to unilaterally invoke a review of cumulative effects beyond the authorities already available to them under various state laws.

200(3)(d)(iv)

This section is missing a discussion/definition of what "substantial amounts of shorelines of state-wide significance" are.

Ecology has edited the provision to clarify that all shorelines of statewide significance must be addressed. The text now reads: "If the area contains ~~substantial amounts of~~ shorelines of state-wide significance, undertake the steps outlined in WAC 173-26-250."

200(3)(d)(vi)

The proposed rule mandates that GMA cities and counties shall review their comprehensive plan policies and development regulations to ensure mutual consistency. (p. 32). This would mandate re-review of local GMA plans and ordinances for compliance with this new proposed rule. DOE does not have the authority to order this re-review. State law requires that local SMPs comply with GMA requirements, not the reverse.

The requirement for consistency between elements of a comprehensive plan is contained in the GMA and is not being mandated by Ecology. Ecology is following the direction of the legislature and adopting updated guidelines. This triggers a requirement to write a new master program which then becomes an element of the local comprehensive plan. The comprehensive plan must be internally consistent. Ecology will not review the local comprehensive plan for internal consistency. We will only review the SMP for consistency with the SMA and the Guidelines as specified in the SMA.

200(3)(d)(vii)

The federal Clean Water Act and state water law sets water quality and quantity standards, respectively. This section requires local governments to identify "water quality and quantity issues relevant to master program provisions". This would create redundancy with other state programs, with no statutory authority to create the additional requirement, which will only serve to unnecessarily add costs to local governments inventorying and analyzing shoreline issues of concern.

The policy of the SMA clearly includes protection of water quality as one of the features of the shoreline necessary for a healthy shoreline environment. The intent of the provision is to assure that the local SMP recognizes and is coordinated with federal and state clean water laws.

200(3)(d)(vii)

Also should include British Columbia.

Ecology has no authority to require consultation with other states or nations. However, there is nothing in the rule that would prevent local governments from voluntarily cooperating with other states or BC in addressing shoreline issues.

200(3)(d)(viii)

This section provides for local governments to identify "feasible means to restore those (ecological) functions". It has been our experience that local governments view of "feasible means" provides for little or no real protection for fish. Based on the definition of feasible, only actions that allow do not "physically preclude achieving the projects primary intended use" will be utilized. This section therefore is interpreted to mean that if it is infeasible to protect fish and still accomplish the primary use, the fish will be sacrificed. This is inconsistent with the Endangered Species Act, and has a primary reason that fish are in decline. When there is a clear choice between fish being killed, and a project moving forward, the fish should come first.

The phrase in question is a requirement to "identify important ecological functions that have been degraded through loss of vegetation and *feasible means* to restore those functions." In this context, ecological restoration is the "use," and Ecology believes it is reasonable to require that restoration must be feasible.

200(3)(d)(viii)

Add sentence to this paragraph: "Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify alternatives available for routine vegetation maintenance at public facilities. ..." Add after first sentence: "Existing public transportation facilities shall be allowed in any assigned environment and will not require a variance or conditional use permit for projects necessary to continue operation."

Ecology respectfully declines this suggestion, as it would be inappropriate in this broadly applicable provision to address the needs of a specific use, such as vegetation maintenance at public facilities.

200(3)(g) Prepare shoreline regulations

The draft guidelines contain an ill-advised precautionary principle: ("As a general rule, the less known about existing resources…") Regulators need to act on incomplete information in most if not all cases: are there any situations where there are no questions "about the extent or condition of an existing ecological resource"? In many, if not most, cases it would be impossible to "ensure" that there is no significant resource damage without blocking all new significant development. Such anti-development bias is inappropriate and unwise - it could block many desirable as well as undesirable projects.

This citation states that the most stringent protection be placed on areas with unknown value. While the intent of protection is admirable, given the financial insecurity of research and value assignment, it could be expected that most of the shoreline functions within a jurisdiction would be unknown. To alter the designation (a comprehensive plan amendment process), burden of proof of functional value (and cost) will be on the applicant. Again, the burden of study for the good of society of society's environmental impact will fall on the few.

The proposed rule states, "If there is a question about the extent or condition of an existing ecological resource, the master program provisions shall be sufficiently restrictive to ensure that the resource is not significantly damaged" (p. 33). A local government must either conduct a thorough environmental analysis to remove any question of impact, or it must set "sufficiently restrictive

standards" to ensure no damage. A definition of "significantly damaged" is not provided; however, the terms "significant ecological impact" and "substantially degrade" are defined in such a manner that virtually any detectable impact could be deemed to "significantly damage" ecological resources. This preference for "more" regulation in the face of uncertainty will have deleterious practical consequences for local jurisdictions that must have an efficient and predictable permit process. This preference for "more" regulation also will exacerbate constitutional takings and due process issues discussed below.

They still have a catch 22. They say that under Path A local governments don't have to go out and do any new inventory. We can look at an existing document to inventory, to go out and look at our environment before we designate it. But it still says if there is a question about the extent or condition of an existing ecological resource, the county plan shall be sufficiently restrictive to ensure that the resource is not substantially damaged. And you look back at substantial damage, and it's anything that could or may cause that damage. So if there is any question raised, and we don't have that answer — it doesn't say whether it's a valid question — any question raised about impacts, we've got a branch in the rules so high that question is removed.

The provision requiring that "the less known about the about the existing resources, the more stringent shoreline master programs should be to avoid irreparable damage to shoreline resources" is necessary and appropriate to carry out the policy of the SMA. It is not appropriate to allow resources to be lost simply by not looking for them. This provision can be properly addressed by conducting an adequate inventory at the planning stage and setting appropriate regulations accordingly, or by requiring that resources be adequately inventoried at the time of permit application with general regulations that require that such information be used in the decision process to protect the resources.

Ecology has amended the rule to read; "If there is a question about the extent or condition of an ecological resource, the master program provisions shall be sufficiently restrictive to ensure that the resource is ~~not significantly damaged~~ protected." The change is intended to provide a more clear purpose for the requirement consistent with the policy of the SMA.

210 Environment designation system

We are concerned about the restrictive land uses in the various Shoreline environment designations. Limiting uses to water dependent or water oriented uses will essentially prevent development on all of our many miles of river, slough and wetland frontage. With the decline of fishing and shipping in the Willapa, there are almost no foreseeable water dependent or water oriented industrial developments. The potential future for commercial water dependent/oriented uses is also minimal. Because we have already prioritized public water access, this small city now maintains three local waterfront parks and over five miles of waterfront trails.

At some point there will be sufficient opportunities for public access. We must have the flexibility within our industrial and commercial zones to permit a full range of uses. Land uses should comply with local comprehensive plans and not be dictated by the state's Shoreline regulations. We are also very concerned about the impact of the new guidelines on expansions or renovations within our existing industrial and commercial sites. Will existing non water dependent industries located within the Shoreline jurisdiction on historic industrial sites be prohibited from expanding or updating their facilities? If so the future survival of this community will be in jeopardy.

Giving preference to water dependent or water oriented uses is among the most basic principles of the SMA and these guidelines would be inconsistent with the SMA if they did not fully implement this policy. The guidelines do also make provision for use of shorelines by all other reasonable and appropriate uses where the circumstances and conditions warrant. The planning process described in the guidelines requires consideration of the nature of appropriate uses and opportunities including consideration of provision of public access or shoreline habitat restoration as a means to convert uses that would otherwise not be allowable into allowable uses.

210

In developing master plans, the designation classification system set forth in -210 fails to recognize "protected flood plain" as a category. The Districts ask the Department to consider, as a recommended environmental designation classification pursuant to WAC 173-265-210, a protected flood plain designation. In such areas, the rules of FEMA and USACOE, along with Ecology floodplain management would be the operative regulations from the waterward toe of levees upland. This would provide a unified set of regulations and a point of coordination for County Public Works Department, planning and permitting of activities necessary to maintain ongoing diking and drainage systems without creating inconsistent obligations and multiple masters over the same activity. This proposal relates to the section WAC 173-26-220(2)(iv).

The objective to restoring hydrologic connections among water bodies, water courses, and associated wetlands is, in many cases, a direct contradiction of the flood hazard reduction plans presently in place. Providing incentives to restore water connections that have been impeded by previous development is nice talk, but without financial resources committed to this objective, the burden falls upon taxpayers who have paid to create improvements. To tax these people to reduce their level of protection is unconscionable and a violation of the private property rights of people who have voted to impose financial obligations upon themselves in order to achieve economic objectives. To the extent that these activities have been taking place with proper permits and/or historic permission, the Master Program invites conflict.

The local government has the latitude to create environment designation systems that accommodate specific local circumstances, such as floodplains protected from flooding by dikes, so long as the system is consistent overall with the system established in the guidelines.

Re-establishing hydraulic continuity with off channel habitat is fundamentally necessary to restore habitat for salmon and is thereby a general objective of the guidelines. However Ecology agrees that it may not be appropriate in all circumstances. The SMP planning process requires consideration of such measures. Our experience indicates that it is often feasible to reestablish such connections in a manner that is consistent with flood hazard management objectives.

210

Ecology and NMFS need to add another environment description specific to estuaries and estuarine functions, specifically to those areas forming the transitional boundaries between the rivers dominated by fluvial energy and sediment processes and marine water dominated by tidal energy and sediment processes. Without such a description, the guidelines will have a regulatory "hole"; in other words, areas of critical ecological function where the concepts of fluvial or marine function do not adequately apply. Clallam County is fortunate to have several estuarine systems which are relatively intact, and are working towards restoration of degraded estuaries (such as Jimmycomelately Creek and the Dungeness River). In their natural state,

these systems are incredibly stable overtime, with meander frequencies and rates of movement measured in centuries.

We are currently implementing a study funded by Ecology to describe these rates in estuaries as a portion of a larger study on CMZ's in the County. If the current CMZ definition is retained, and an estuarine section is not added, the CMZ maps will show the CMZ's ending above the upper extent of tidal influence in naturally functioning estuaries. Lack of standards or guidelines specific to these areas and their critical importance to PTE salmonids will result in ineffective protection or restoration.

The current environment designations are recommendations only. The flexibility exists to address any "holes" in regulatory coverage and adapt these environment designations to address the concerns you have related to the transitional areas between fluvial and marine systems. Further, environment designations are not the only method to address the protection and restoration of these transitional areas. Please refer to subsections 220(2) and (5) and 320 (2) and (5) which address critical saltwater habitats and shorelands associated with marine water and estuaries, as well as riverine corridors.

210

WSF terminals are (1) a water-dependent use, (2) a vital transportation link throughout the Puget Sound, and (3) exist and operate in a wide range of shoreline designations. Shoreline designation for ferry terminals has been confusing for many local jurisdictions often resulting in delay of permit processing. Transportation is not sufficiently addressed in this section to enable local jurisdictions to be consistent with their future land use plan as required by WAC 365-195-500. RCW 90.58.020 states that alterations to shoreline will be permitted only in very limited circumstances and gives priority use for such alteration to ports, marinas, piers, among others. In many of the local jurisdictions, WSF must obtain a conditional use permit because it was historically placed in an environment where it was later determined to be a nonconforming use. RCW 90.58.100(5) states that permits for conditional uses may be given only in extraordinary circumstances. Put together, WSF should not be simultaneously required to get conditional use permits while maintaining status as a preferred water-dependent use. Therefore, in addition to specific comments, the Rules should address reconciling these conflicts in the law.

See section 240(2)(b) for a discussion of conditional uses. A conditional use may be appropriate in some cases, such as where there are critical saltwater habitats. We do not necessarily think water dependent transportation facilities should require a CUP. However, in some instances they may be warranted.

210(2) Basic requirements for environment designation classification

The proposed guidelines provide that: "Master programs shall contain a system to classify shoreline areas into specific environment designations. Each master program's classification system shall be consistent with that described in WAC 173-26-210(4) and (5) . . . unless there is a compelling reason, based on the act and this chapter, to the contrary and the alternative proposal provides equal or better implementation of the act." There is a high burden on any local government wanting to depart from the recommended classification system set out in -210(4) and(5).

Ecology has tried to establish an environment designation system that strikes a balance between providing specific performance-based policies and designation criteria and one that has the flexibility to accommodate alternative approaches where justified. Many have demanded this flexibility. With this flexibility comes some measure of burden. Otherwise, implementation consistent with the policy of the SMA cannot be assured.

210(2)

In 1st paragraph, who determines if the alternative provides "equal or better"? Ecology?

Ecology is ultimately responsible for determining if an SMP meets the requirements of the SMA and the guidelines. However, public input is required at the local level and at the state approval level. Ecology's decision can be appealed to the SHB and the courts.

210(2)

ADD: <u>The map designating shoreline environments should also illustrate the location of critical shoreline habitat. Applicants for shoreline permits shall depend on this map for locating critical shoreline habitat.</u>

These mapping products, at a minimum, should also include critical habitat designations and water quality impairment listings.

Shoreline environment designation maps are designed to show the general shoreline management scheme for a local jurisdiction. Other more detailed maps and geographic information systems will likely be necessary to locate site-specific critical habitats. Local governments could elect to combine detailed resource data on environment designation maps.

210(2)

This section requires all areas not designated to be assigned a rural conservancy. However, this is by definition outside a UGA, so many cities wouldn't have reg's in place for this designation. Allow the Urban conservancy designation to substitute for rural conservancy.

Ecology agrees, and has revised the language in 210(2) and 310(2). The language now reads: "The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation<u>, or "urban conservancy" designation if within a municipality or urban growth area,</u> until the shoreline can be redesignated through a master program amendment."

210(2)

The second to last paragraphs states that all areas without mapping or designation should be assigned with "rural conservancy". This does not appear to be the most stringent of the designations, as required by paragraph g of the preceding regulation. This appears to be an error in the text and intent.

The intent is that all areas will be inventoried and designated. In those limited instances where that effort fails, the rural or urban conservancy designations are appropriate holding categories pending full review and designation.

210(3) Consistency between env. designations and local comp plan

The proposed rule mandates review of local GMA plans and ordinances (including zoning) to demonstrate that provisions do not preclude one another (pp. 36-37) The proposed rule requires local GMA infrastructure plans to be consistent with shoreline designations, and that comprehensive plans and development regulations prevent new development that is not compatible with the location of shoreline preferred uses. This provides yet another opportunity for DOE to review all local land use regulations, over which it otherwise has no authority.

As written, this section implies that the zoning and other regulations take precedence over the master program use policies. It could be argued that the SMA is less of a "balancing act" than the GMA; therefore, the SMA has the potential to provide more protection than any zoning or other land use regulation adopted under GMA. Any conflicts that arise from SMA and GMA regulations should be modified to provide the most protection for fish and shellfish habitat areas. The SMA should not be compromised to accommodate the GMA.

When taking into consideration the definition of "should," this section expands DOE authority to review and approve SMPs for consistency with local land use plans developed under the Growth Management Act. Under state law, DOE may ""develop recommendations for land use control" on shoreline areas, but the determination of consistency is left to the local government. DOE should delete this provision from the proposed rule.

The requirement for consistency between elements of a comprehensive plan is contained in the GMA and is not being mandated by Ecology. Ecology is following the direction of the legislature and adopting updated guidelines. This triggers a requirement to write a new master program which then becomes an element of the local comprehensive plan. The comprehensive plan must be internally consistent. Ecology will not review the local comprehensive plan for internal consistency. Ecology will only review the SMP for consistency with the SMA and the Guidelines as specified in the SMA.

210(3)(c)

Suggest: "In delineating environment designations, local governments should ensure that existing shoreline functions can be protected .... Utility services routed through shoreline areas shall not be a sole justification for more intense development. Alternatively, existing and operating infrastructure facilities such as transportation facilities, shall be a permitted use in any shoreline environment designation or parallel designation and shall not be a non-conforming use."

It is inappropriate in this broadly applicable provision to address the needs of a specific use. The suggested provision is not consistent with the policy and provisions of the SMA.

210(3)(c)

The rule says "[s]horeline uses should [or shall, under Path B] not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them." Not only does this requirement improperly use GMA concurrency in the shoreline jurisdiction, but it also expands the concurrency definition to mandate immediate availability of all facilities to serve a development. In effect, the Guidelines create a moratorium on development in a majority of rural and coastal shoreline jurisdictions.

This provision requires coordination between SMA planning and the GMA infrastructure planning provisions. This is appropriate and reasonable. It does not mandate immediate availability, only coordinated planning.

210(4) Recommended environment designation classifications

The proposed regulations cite six basic environments. As indicated later in the regulations, mineral extraction is a subset of the Rural Conservancy classification (not found in Path B). However, given the uniqueness of the aggregate resource, it may be advisable to carry another classification protecting such deposits. Natural resource protection is required under Growth Management Act regulation. As indicated in the proposed regulations, the shoreline requirements should compliment and agree with other regulation, including comprehensive plans and the Growth Management Act.

Mining must be an allowed use under the various environmental designation classifications, just as agriculture, commercial forestry, etc. Again, along shorelines is where the aggregate is found. It is required by law (GMA) to protect this natural resource just like other resources. It must also be made available to the citizens of the state.

Ecology has amended the provisions regarding designation of mineral resource lands in conjunction with the shoreline environment designation system [see responses to 210(5)(b)].

210(4)

We support the new shoreline designations for more flexibility but we cannot endorse flexibility to the point of allowing local designations as a substitute. The rules need more guidance on the standards locals must follow when they adopt environment designations that differ from DOE's.

We're opposed to allowing local jurisdictions to create their own environment designations which also creates another hodgepodge of problems with inability to track and monitor what is happening. I would like to submit for the record a copy of a paper presented at the Coastal Zone 87 Conference which documents that during the first ten years of SMA75 percent of the local master program amendments approved by Ecology were weakening ones. In that paper there is a note from the Fish and Wildlife Service who objected to how the state was putting its program together because the state "delegated so much responsibility back to the local government as to leave it in a weak and easily overwhelmable position." That still sums up the problems when flexibility is handed back to locals under the guise of the State Management Act Program. Another reference to the attorney general memo that was done in 1981 says, "The obvious emphasis of this section and the purpose of the Shoreline Management Act is to discourage piecemeal planning for the use of shorelines." Consistent with this approach, it seems reasonable as a general rule to require that master program changes deal with coherent, integral segments of the shoreline as opposed to isolated parcels of property. If the proposed changes are only for an isolated parcel, the traditional rules against spot zonings and those pertaining to rezoning should be carefully adhered to. Again, what we have seen too much of in the past has been too much spot zoning for inappropriate development.

This flexibility allows local governments the means to write master programs that can more fairly and effectively deal with local, and often unique, situations.

This issue will be addressed in more detail when Ecology, in collaboration with local governments and interested parties updates the Shoreline Management Guidebook. The update will begin immediately following adoption of new guidelines.

210(4)

We are concerned that the use of parallel environments will allow the continued degradation of habitat-forming processes necessary for fish, shellfish, and wildlife resources protected by treaty.

The use of parallel environment designations recognizes that use character and habitat values can change dramatically within the area of jurisdiction. It is reasonably common to have an area that is in relatively undisturbed condition bordered by agriculture, roads or even high intensity urban uses. It is more appropriate to designate the shoreline in a manner that recognizes this situation than to try to force fit either the natural area or the developed area into a category designed for the other.

210(4)(a)(i) Natural environment

What is a ""natural"" (or "natural") environment or character? What do the quotes signify? Does "natural" mean lots of vegetation? Virgin growth (i.e., untouched by humans)? I've seen mines that have been "naturally" re-vegetated and to some degree, "naturally" re-contoured that look pretty "natural" to me.

Section 210(4) defines what the "natural environment" designation is, its purpose, and how such areas should be managed. Section 210(5)(a) defines the criteria for assigning the designation.

210(4)(a)(ii) Management Policies

The purpose statement for the natural environment identifies "areas that are relatively free of human influence or that include important shoreline functions intolerant of human use." Yet, subsection (ii)(B) provides that residential development may be allowed. It is difficult to reconcile allowing residential development with protecting areas relatively free of human influence or that are intolerant of human use. Similarly, subsection (ii)(C), allowing commercial forestry, clearly conflicts with the purpose of the natural environment. Subsection (ii)(E) seems to allow for development, vegetation removal and shoreline modification at a level well in excess of that indicated in the purpose statement.

The language that would allow limited development, including residential, within the natural environment designated shoreline areas should be stricken because it will allow site-specific and cumulative impacts to occur. Similarly, commercial forestry should not be allowed as a conditional use in part (ii)(C). Finally, the standards for less intensive uses (i.e. scientific and cultural) in part (ii)(D) are greater than they are for limited development and commercial forestry.

In the current Pierce Co. SMP the natural environment includes only those areas most intolerant of human intrusion, such as sand spits, estuaries, steep slopes, sandy beaches, lagoons, and other sensitive areas. These areas are, for the most part, limited to small stretches of shoreline, and as such, do not significantly decrease the County-wide development potential along shorelines. Because they are quite limited in area, there has not been a great deal of pressure to develop the natural environment in the County. It may be advisable to limit the natural environment to only those areas acutely intolerant of human intrusion. This would preserve these valuable and sensitive resources while largely curtailing pressure to develop the natural environment. Other sensitive areas that may be larger in area and are not quite as sensitive to human intrusion could be given a somewhat less restrictive "natural II" designation. These areas could allow for uses as identified in the draft guidelines.

In the past the Natural environment typically allowed no such uses and also typically was applied to only very small areas of private land if any at all. The goal of allowing limited development in the "natural" designation is to encourage local governments to designate more areas as "natural" in their SMPs. The overall master program will be more protective if more areas are so designated. However, reasonable use must be allowed if important natural areas on private land are to be protected by a natural designation. The conditional use provisions assure that each such use will be evaluated individually for impacts to shoreline resources and consistency with the environment designation.

Local governments could choose to create a "Natural II" designation for areas not quite as sensitive to human intrusion, as one commentor suggests.

210(4)(a)(ii)

Underground utility corridors can and do exist within natural environment. Additionally, there are requirements for utilities and transportation corridors to cross a shoreline environment in the shortest and most direct route possible. Often these routes will include a natural shoreline environment. It is necessary for utility corridors to be exempt from this policy. Finally, include in the following language: "Limited development, including residential development and necessary appurtenant (or accessory) utilities..."

Limiting the ability of Douglas PUD to place "utility corridors" within the "Natural Environment" designation inhibits the District's ability to serve our valued customer base in an efficient and timely manner. Many of the District's current utility easements are found within such areas adjacent to the shoreline. Obligating the District to acquire new utility easements outside of such areas, places an undue financial and service burden on the District and our customers.

Placement of new utility corridors that require major alteration of the environment would be incompatible with the natural environment designation. The presence of existing utility corridors that involve major vegetation alteration would generally not be considered to be areas that are "relatively free of human influence" and thus not appropriate for designation as natural. Less intrusive corridors may be deemed compatible with the natural environment particularly where necessary to serve existing or permitted uses. The Utilities use section (240(3)(l) provides for appurtenant utilities.

210(4)(a)(ii)(B)

Last bullet: we suggest adding the word feasibly: "Roads, utility corridors, and parking areas that can feasibly be located outside "natural" designated shorelines."

Ecology respectfully declines this suggestion. Local government can define more specifically when such uses are allowable within their system.

210(4)(a)(ii)(B)

Management policies described in the Natural environment appear to exclude mining and development from use of the area. If all unknown areas are automatically given the most restrictive designation, then the Natural environment would apply. Given this possibility, vast areas within a jurisdiction could be set aside from aggregate development, regardless of available resource, functional values, or enhancement possibilities from development reclamation.

Mining is incompatible with the Natural environment designation. The default environment designation is specifically identified in 173-26-210 (2) as rural or urban conservancy. Because SMPs have been in place for decades, there simply are not vast areas of "unknown" shorelines.

210(4)(a)(ii)(C)

This section states that commercial forestry may be allowed ...if conditions of the State Forest Practices Act and its implementing rules are met. There should also be a reminder of the "30% rule" (RCW 90.58.150) which allows only 30% harvest within 200 feet of the ordinary high water mark, over a 10 year period, for Shorelines of Statewide Significance. Except in certain circumstances, a permit has not been required for commercial timber harvest under this law, but this draft rule states that a Conditional Use Permit would be required for the Natural Environment. Can a rule establish that a permit is required when the law does not state that? WAC 173-26-240 mentions the above law, but states that "Exceptions to this standard shall be by conditional use permit only". Does this mean that a permit can be issued that is in conflict to the law? Please clarify.

The provisions of RCW 90.58.150 provide for the 30% harvest rule but also allows exceptions. Unfortunately, the decision-making authority for such exceptions is vague. The requirement for a conditional use permit will assure that both state and local government have reviewed the exceptions based on the criteria in the SMA and made a decision on the proposal.

210(4)(a)(ii)(C)

The draft guidelines provide that: Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules. Conditional uses are subject to the most burdensome permit procedures under the SMA, requiring formal approval by both local government and DOE. In contrast, timber harvesting is not considered a "substantial development" and therefore generally does not require an SMA permit under current rules and policies. We urge DOE to revise the guidelines so that shorelines containing private forestlands are classified as rural conservancy, forest resource, or some equivalent designation if they are either: (1) designated as forestlands of long-term commercial significance under the GMA, or (2) more likely to contribute to SMA goals if managed for commercial forestry under the forest practices act than converted to other economic uses.

☒ Most commercial forestlands are likely to be designated as Rural Conservancy. The designation criteria for Rural Conservancy in 173-26-210(5)(b) specifically indicate that GMA designated commercial forestlands should be in the that environment. However, where areas of commercial forestland meet the designation criteria of the Natural environment, they should be so designated in order to preserve these critical and rare areas. The provisions requiring a conditional use permit assure that reasonable use is allowed in a manner that is consistent with the overall policies of the environment designation and the SMA.

210(4)(a)(ii)(E)

Add the paragraph: "Do not allow significant soil or substrate extraction, grading, or fill that reduces the capacity of vegetation to perform normal ecological functions or reduces/impairs PFC for PTE species."

☒ This change is made unnecessary by the management policy requirements of 173-26-210(4)(a)(ii)(A) which provides that "any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed."

210(4)(b)(i) Rural conservancy environment

This section states that agriculture will protect, conserve, and restore ecological functions in the rural conservancy environment. As expressed before, agriculture continues to have devastating impacts on shorelines, and aquatic resource of the state. It is absurd to consider this use in any conservancy environment.

Agricultural practices should not be allowed in shorelines in areas close enough to watercourses to impair water quality or fish habitat. Fish stocks will not be protected, conserved, or restored if these practices are allowed to continue.

Management policy (A) is inconsistent with management policy (B). Agricultural practices have and will degrade or deplete the physical and biological resources along shoreline areas.

Much of the "Rural Conservancy" shoreline is devoted to natural resource use. These uses include a wide range of agricultural products, varying forest products, and mineral development, in addition to the water-dependent uses. Under the GMA and the impact assessment provided under SEPA, the lowest impacts on the aquatic and shoreline environment occur when natural resource uses are conducted in accordance with best management practices. Farming and forest are not "development." Farming and forestry are compatible with goals of achieving water quality, wildlife habitat, and other values associated with an unaltered environment. Farming and forestry are not compatible with public access, in most cases. Furthermore, the denial of public access has a positive effect on wildlife habitat use and prevents disturbance caused by human intrusion and the incidents of wildlife interacting with dogs and other introduced species.

☒ Agriculture uses such as pasture and rangelands have been a part of the conservancy environment since 1972. When properly conducted, these uses are compatible with preservation of the natural resource values of the shoreline. The guidelines combine the former "rural" and "conservancy" designations and capture both rangeland and intensive agriculture into one designation. The state's Agriculture Fish and Water process is developing means and methods to assure protection of fish stocks on farmland.

210(4)(b)(i)

The draft guidelines list "timber harvesting on a sustained-yield basis" as one of the purposes of the rural conservancy environment designation. That could invite, if not require, local governments to regulate the rate of timber harvest to assure that it is done on a sustained yield basis. Larger owners may be able to show that their timberlands, taken in large units, are managed on a sustained yield basis, but it may be impossible to show that smaller properties or particular shoreline segments are being managed on a sustained yield basis. It would be extremely difficult for local governments to regulate harvest rates to assure that forested shorelines are managed for sustained yield, either on an individual ownership basis or without regard to ownership. The reference to sustained yield should be dropped or phrased as a policy goal rather than an enforceable regulatory requirement.

☒ The reference to timber harvesting on a sustained yield basis is included as one of several examples of uses appropriate in the rural conservancy designation. The language is carried forward from the original "conservancy" environment language in 173-16(040(4)(a)(ii). Standards for regulation of forestry uses are found in Section 240(3)(e).

210(4)(b)(ii)

The rural conservancy policies appear to outlaw irrigation.

☒ The management provisions of the rural conservancy environment will not affect existing and ongoing irrigated agricultural development.

210(4)(b)(ii)

There are no provisions in this section for transportation and utility corridors to provide necessary services to allowable uses in this shoreline designation. Please include a management policy that addresses this requirement. A management policy addressing these transportation and utility corridors is also necessary for the "High-intensity" and "Urban conservancy" environments.

☒ The provisions of Section 240(3)(k) and (l) address these issues.

210(4)(b)(ii)(A)

Most commercial forestlands probably will be designated as "rural conservancy." These areas will be subject to master program use regulations designed to implement "Management policies" specified in the guidelines, including (A) and (B). Thus, local governments "may" - but apparently would not have to - allow forest management in the rural conservancy environment. Further, if the phrase "when consistent with the provisions of this chapter" is read as applying to commercial forestry as well as aquaculture, local governments could be prevented from allowing commercial forestry where it is not considered "consistent with" various guideline provisions, e.g. would "substantially degrade . . . biological resources."

☒ Section 240(3)(e) clarifies the management policies for forest practices. The guidelines refer to the Forest Practices Act.

210(4)(b)(ii)(A)

Here and in –210(4)(d) there needs to be clarification on the definition of "commercial and industrial uses" and a clear distinction between "commercial and industrial uses" and aquaculture, forestry, and agriculture. Even though aquaculture, forestry, and agriculture are commercial activities, they are allowed outright in many designations and "commercial and industrial uses" are not. This is confusing.

The original 1972 guidelines (173-16) started each of the use standards with a definition. For example, "commercial development" was defined as "those uses which are involved in wholesale and retail trade or business activities. Commercial developments range from small businesses within residences, to high-rise office buildings. Commercial developments are intensive users of space because of extensive floor areas and because of facilities, such as parking, necessary to service them." Ecology opted not to include these kinds of definitions in front of most use sections because it seemed unnecessary. We believe that having distinctly different standards for agriculture, forestry, and commercial uses clarifies that the standards for each do not overlap.

210(4)(b)(ii)(A)

Beginning of second paragraph add: "Existing ferry terminal use should be allowed and will not constitute a non-conforming use. ... instances where those uses have been located in the past ..."

Ecology respectfully declines this suggestion, as it would be inappropriate in this broadly applicable provision to address the needs of a specific use.

210(4)(b)(ii)(B)

Management policies described in the Rural conservancy environment disallow any development that would permanently deplete physical resources of the area. The removal of aggregate, in the historic time frame, could be considered as a depletion of a physical resource, regardless of the benefits, both social and environmental, that may be gained from this. While the criteria stated in (5)(b), Rural Conservancy environment criteria, allows for the designation of mineral resource lands of economic importance, this subsection may allow for the prevention of resource development. This appears to be another dichotomy of the text.

Mining could be considered a depletion of resources and not consistent with management policies for the "rural conservancy" environment. However, mining of mineral resources lands of economic importance is provided for in the GMA. To avoid conflict between the resource management policies of the "rural conservancy" environment and the need to consider mining within designated resource lands, the guidelines allow such lands to be designated as an environment subdesignation. A specific subdesignation will allow local governments to address those resources.

210(4)(b)(ii)(C)

In (ii)(C), after "WAC 173-26-230" add "and other applicable state and federal regulations."

Ecology does not believe the suggested change is necessary because laws, rules, and regulations are not required to reference each other to be applicable and enforceable.

210(4)(b)(ii) (D)

What is the definition of "impervious surface area"?

"Impervious surface area" means any area on the ground that cannot absorb rainwater or surface water runoff. For example, asphalt driveways and concrete walkways are impervious surfaces areas.

210(4)(b)(ii)(D)

Studies show that even 10% impervious is far too high; a watershed that reaches that level shows "demonstrable, and probably irreversible, loss of aquatic-system function." (See "Urbanization of Aquatic Systems: Degradation Thresholds, Stormwater Detention, and the Limits of Mitigation." - Booth & Jackson, 1997; "The Importance of Imperviousness". - Schueler, 1994) This section provides for impervious surfaces to reach 10%. Studies have shown that stream channels are irreparably damaged at this level of impervious surface. For the purpose of protecting and recovering salmon stocks, levels should be in the 3-5% range. There is no scientific basis to allow for such high levels of impact as proposed. The 10% threshold for impervious surface is supported by a wide range of technical studies. Where this threshold is already clearly exceeded, we believe that it would be valuable to consider restoration approaches for reducing impervious surfaces and stabilizing further change to stream hydrographs.

The proposed rule requires that newly created lots in non-GMA counties which are within the jurisdiction of the SMA cannot have more than 10 percent impervious surface coverage (p. 39). For example, a 100-foot-wide waterfront lot could have no more than 2000 square feet of house, deck, garage, driveway, etc. within the first 200 feet from the water. This is a not-so-subtle means of forcing houses to be setback 200 feet from the water, or to make waterfront lots very large (a five acre waterfront lot would only allow 4,356 square feet of house/garage/driveway/etc. within the first 200 feet from the water). This rule essentially will force non-GMA counties to mandate large lots in areas subject to shoreline jurisdiction. The only way to avoid this requirement would be to produce a separate lot coverage standard based upon "scientific information" that meets the provisions of the proposed rule and protects shoreline ecological functions (i.e., establishes large buffers).

Development on existing waterfront lots in non-GMA counties could exceed the 10 percent lot coverage if the local government requires mitigation, and follows that mandated mitigation sequence (p. 39). Given the lack of any discussion supporting this "10 percent rule," we want DOE to delineate the Best Available Science, which mandates large lots in general, and the "10 percent rule" in particular. The proposed 10% impervious surface limit is impractical and would preclude otherwise efficient allowable land uses. What is the scientific basis for this percentage?

The 10% lot coverage provision is based on studies that indicate that approximately 10% coverage by impervious surfaces is the threshold where changes in surface water runoff from developed areas alters the hydrologic characteristics of a watershed and causes loss of habitat values. The requirement in the guidelines applies only to SMA jurisdiction and only in areas that qualify for designation as Rural Conservancy which is for the most part areas that currently have a low density of residential development, forestry or farming uses. In these areas , the lands in SMA jurisdiction are often the most densely developed and therefore it is expected that overall watershed impervious surface coverage would be lower. The purpose of the requirement is to assure maintenance of shoreline ecological functions.

210(4)(b)(ii) (D)

There appears to be an error in the second paragraph. There is a recommendation to restrict development in the shoreline to a maximum of 10% impervious surface area for those jurisdictions NOT planning under GMA. It seems that this condition should apply to those jurisdictions that ARE planning under GMA. Also there should be

a requirement for nonconforming uses to restore ecological functions in addition to reducing impacts to these functions.

The subject provision is not an error. The intent is that GMA jurisdictions should follow "Rural Element Criteria" from the GMA.

210(4)(c) Aquatic environment

To assure that aquatic environment uses are compatible with uses on the adjacent shorelands, uses allowed in the aquatic environment should be required to be compatible with uses in the adjacent upland environment designation. It may be appropriate to place this requirement only within a given distance waterward of the OHWM, so as to prevent, for example, requiring uses far out into Puget Sound from being directly compatible with distant shoreland areas.

The provisions of 210(3) address compatibility between uses and plan designations adequately by indicating that local government should consider these issues in crafting the designation provisions and applying the designations.

210(4)(c)(ii)(B)

The new Guidelines state that local governments should limit the size of over-water structures in aquatic environments (e.g. piers and docks) to the minimum size necessary to support the structure's intended use. This statement provides no direction or guidance to local governments in making this determination. A neat solution to this problem can be found in a later section of the Guidelines which specifically applies to piers and docks. WAC 176-26-230(3)(b) states that the needs analysis or comprehensive planning done by a port district can serve as the necessary justification for size variations. Similar language should be included in this section to improve consistency and to minimize semantic arguments about what is "necessary."

While the commentor's proposal is reasonable for a port authority, it may be deemed less so when applied to a dock associated with a single-family residence. See also Section 240(3)(b) which is specific to docks and piers.

210(4)(d) High Intensity environment

This section requires that all high-intensity water-oriented commercial and industrial uses be restricted to the "high intensity environment". The section also states that "The purpose of this environment is to ensure optimum use of shorelines that are presently industrial or commercial in nature." This provision is in direct conflict with RCW 36.70A.365 which allows "Major Industrial Developments" to be located outside of urban growth areas if the development: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent. This proposed section will significantly reduce legislative and statutory intent to allow rural communities to attract and appropriately site natural resource based industries.

The provisions of 173-26-210(5) recognize the designation of rural areas of more intense development, which may include industrial development. Location of a non-water oriented major industrial development within SMA jurisdiction and in a manner that resulted in degradation of ecological function or shoreline resource values would be inconsistent with the policy of the SMA. Since the legislation which created the major industrial development provision did not specifically address SMA issues, it must be assumed that it did not intend to alter the policy of the act with regard to the location of such developments.

210(4)(d)

The High-Intensity environment focuses too much on restoration and mitigation rather than on prevention and must include clear standards for retaining and preserving existing native vegetation.

Subsections 220(5) and 320(5) provide specific standards for prevention (retaining and preserving existing native vegetation).

210(4)(d)(i)

Add word: Water-oriented commercial, <u>transportation</u>, and industrial uses allowed.

Ecology has amended the High Intensity purpose section to include the word "transportation." The language now reads:" <u>The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, **transportation**, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.</u> ~~The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial and industrial uses while protecting and restoring ecological functions. The "high-intensity" environment is designed to ensure optimum use of shorelines that are presently industrial or commercial in nature or planned for such use."~~

210(4)(e) Urban Conservancy environment

The Urban Conservancy environment focuses too much on restoration and mitigation rather than on prevention and must include clear standards for retaining and preserving existing native vegetation.

Management policies for the urban conservancy environment contained in subsection (ii)(B) directs local governments to establish standards that "ensure that new development does not further degrade the shoreline and is consistent with an overall goal to improve ecological functions," which include preserving native vegetation. Similar requirements exist in section 310(4)(e).

210(4)(f)(ii)(A) Shoreline residential environment

The proposed regulation says "Shoreline uses should be permitted only where there are adequate access, water, sewage disposal, and utilities systems, and public services available and where the environment can support the proposed use in a manner which protects or restores ecological functions." The regulations must address shoreline protection, not provisions of infrastructure or entire flood plains. This section must be deleted.

This section, and the Path B version, restricts development to those areas with available and adequate access, water, sewage disposal, and other public services. Not only does this requirement improperly use GMA concurrency in the shoreline jurisdiction, but it also expands the concurrency definition to mandate immediate availability of all facilities to serve a development. In effect, the Guidelines create a moratorium on development in a majority of rural and coastal shoreline jurisdictions.

The proposed rule directs local government to permit development only in those shoreline areas where there is adequate access, water, sewage disposal, and utility systems (p. 42). For areas subject to shoreline jurisdiction, local government could be required to gain DOE approval of local rules governing property access, water supply, on-site sewage disposal, and utility systems. DOE has conveniently forgotten that the State Department of Health and local boards of health regulate on-site septic and water systems. Access and utility capacity is established by the local legislative authority under its land use planning

authority, and is not subject to approval by DOE.

This provision requires coordination between SMA planning and the GMA infrastructure planning provisions. This is appropriate and reasonable. It does not mandate immediate availability, only coordinated planning. Ecology believes designation of shoreline residential is only appropriate where adequate facilities exist to support the intended density and use.

210(4)(f)(ii)(B)& (C)

Management policies (B) and (C) are vague. Minimum frontage standards should be established along with standards for vegetation conservation.

The management policies are intended to be of a general nature. More specific standards for vegetation conservation are found in 220(5) and 320(5).

210(4)(f)(ii)(C)

The proposed rule directs local government to develop management standards for critical areas and water quality in order to protect and restore "ecological functions" (p. 42). This directive complicates and unnecessarily duplicates the GMA, the Clean Water Act 303(d) TMDL water quality assessment and planning efforts, and other federal and state water quality programs that actually have jurisdiction over water quality parameters.

The intent of the provision is to ensure coordinate with various other applicable laws, such as water quality laws.

210(4)(f)(ii)(F) *Note: was (E) in draft rule*

"Commercial <u>and transportation</u> development should be limited to water-oriented uses, <u>and priority given to water-dependent uses</u>.

Transportation is not necessarily an appropriate use in shoreline residential environments, though the provision does not preclude them where it is appropriate under the local system.

210(5) Criteria for assigning environment designation boundaries

Criteria used to assign environmental designations are based on the level of shoreline use and not ecological based. This system does not "protect against adverse effects to the land and its vegetation and wildlife, and the waters of the state and their aquatic life," per the SMA.

Level of shoreline use is certainly a consideration, but hardly the sole basis for environment designation. Sections 200(e) and 300(e) direct local governments to assign each shoreline segment an environment designation based on inventory and analysis and adhere to the priorities in WAC 173-26-200[300](2)(d). That section cites the SMA policy relating to protecting against adverse effects. This inventory and analysis process sets the foundation for an ecologically based shoreline environment designation regulatory system.

210(5)

Fig. 6 consists of an example shoreline community, and possible shoreline classifications within it. Two of the narrative statements within this Figure could cause confusion, and should be amended. The classification labeled "Natural" uses the phrase "critical areas" next to it. This phraseology could cause a reader to think that all critical areas within a UGA should receive a "natural" classification. The problem here is that under the Growth Management Act, all fish habitat (and therefore all marine and riverine shorelines and aquatic lands) are considered "critical areas". Figure 6, if read literally, would cause all shorelines within a UGA to receive a "natural" classification.

In addition, the classification labeled "Urban Conservancy" includes the phrase "brownfields". This phrase means different things to different people, but commonly refers to contaminated and vacant industrial land. Many of these properties will be cleaned up to industrial standards, and in fact rely upon a flow of income from the property in order to pay for the cleanup. A literal reading of Fig. 6 could lead to a conclusion that all brownfield properties should be classified as "Urban Conservancy", and cause the same problem as identified in the preceding paragraph.

The Port is very concerned that Fig. 6, although allegedly for "illustration" purposes, explicitly states that brownfields should be designated as "urban conservancy." The problem is the rule states that the main purpose of this designation is to protect and restore ecological function, and that "all reasonable efforts should be taken to restore ecological function." We believe this sets the bar too high for brownfield projects, which, by their very nature, are highly contaminated and undesirable parcels of property. It is unreasonable to expect that any property owner or potential purchaser would embark on the clean up and redevelopment of such properties if a major portion of the property would subsequently have to be dedicated to habitat restoration. Not only would this be economically impossible, but we have serious doubts whether such contaminated properties could ever be able to achieve the relative pristine water quality needed to truly restore ecological function. The figure should be changed.

The illustration is hypothetical and not intended to be read literally. Nevertheless, so as to avoid confusion, specific reference to critical areas has been removed from the illustration.

210(5)

Fig. 6 diagram: What is a "UGA"??

"UGA" means Urban Growth Area as defined in the Growth Management Act. Ecology has added a note in the legend for Figure 6.

210(5)

If designations are to be based on inventories of current conditions, I don't see how there are virtually any areas of the county that would not be downgraded, meaning that areas that were once rural will reflect more urban conditions, and conservancies will be more developed. Inventory will equally across the board downgrade the existing shoreline designations.

Environment designations are to be based on the existing environmental character as well as the existing land use of an area. To the extent that valuable resources exist, the guidelines call for their protection and where feasible and reasonable, their restoration.

210(5)(a) Criteria for Natural environment

The proposed rule indicates that "ecologically intact" portions of farms (generally areas that have native plants and have not yet been put into production) shall be designated as "Natural." New agricultural uses that involve tilling the earth or clearing native vegetation will be prohibited in these naturally designated areas.

The proposed rule does not state that ecologically intact portions of farms shall be designated as natural. Overall the natural designation is to be applied to areas that are ecologically intact and currently performing an important, irreplaceable function or ecosystem wide process. The Rural conservancy environment is specifically designed to be applied to areas that currently support agricultural use.

210(5)(a)

All "ecologically intact shorelines" are supposed to be classified as "natural." That term is defined to mean: ". . . those shorelines that retain the majority of their natural shoreline functions," etc. In contrast, "ecologically altered shorelines" are defined as ". . . those shorelines where humans have directly or indirectly modified the vegetation or shoreline configuration in a manner that significantly influences or reduces the natural shoreline functions." Even intensively managed forests can provide natural shoreline functions and perhaps could be designated as "natural" under these definitions. Finally, under -240(3)(e) the draft guidelines expressly state that: Lands designated as "forestlands of long-term commercial significance [under the GMA] shall be designated either "natural," "rural conservancy," or equivalent environment designation." Shoreline designation as "natural" is inconsistent with a GMA designation as having long-term commercial significance. Further, this provision suggests that forestlands not so designated under the GMA also are candidates for designation as "natural."

It is unlikely that many intensively managed forests will be shown to retain a majority of their natural shoreline functions. However, if they are designated natural, the management policies for natural designation provide that "Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules."

210(5)(a)

Based on your definitions, we believe we would have to declare almost every area of Grays Harbor County as natural environment because of the criteria you have, including one criteria that says if there is any scientific or educational interest in the shoreline we have to declare it as natural environment.

Your rules also point out that in a natural environment designation the following uses should not be: Residences, commercial uses, industrial uses, agriculture that involves tilling the earth or clearing native plant communities — and I would defy you to name any land-based commodity in agriculture that does not involve those farming practices — or roads. This will devastate Grays Harbor County. It will shift taxes to those who are not directly impacted. It will take money away from our criminal justice programs, from our educational systems.

The guidelines indicate that areas with largely undisturbed wetlands, marine estuaries, coastal dunes, and ecologically intact shoreline habitat will be assigned a natural environment designation. The natural designation prohibits homes, prohibits commercial uses, bans industrial uses, and roads, and will not allow agriculture that involves tilling the earth or clearing native plants. Most of Grays Harbor and Pacific Counties are undisturbed wetlands, marine estuaries, coastal dunes, or ecologically intact shoreline habitat. With the Path A and the Path B system, NMFS and U.S. Fish and Wildlife will determine how much of Grays Harbor and Pacific County will be designated natural, which is very broadly defined.

Much of Grays Harbor County will be designated "natural" which will restrict commercial and industrial uses and utility corridors. This will adversely impact Port property.

Your rules state that, "The natural environment designation shall be assigned if any of the following characters apply. One, the shoreline is ecologically intact. Two, the shoreline is considered to represent the ecosystems of particular scientific or educational interest. Or three, the shoreline is unable to support new development other uses without significant ecological impacts." As an example of the stretch of the imagination that went into the definitions, "an ecologically intact shoreline is not necessarily free of structural shoreline modifications, structures, and intensive human uses."

This section requires that local governments must assign the "natural" classification ". . . if any of the following characteristics apply (see list)." If a local government proposes to classify any shorelines having any of those characteristics as anything other than "natural," DOE may refuse to approve the classification. If DOE does approve it, any citizen may appeal that approval. Thus local government decisions regarding environment designations, which until now have been considered legislative in nature and thus subject to review only on procedural grounds, could be considered more in the nature of adjudicatory decisions for which much less deference would be given to local policymakers.

Under the designation criteria for all environments, it is highly unlikely that large areas will be designated natural. Ecology has amended the rule to clarify that the provisions apply only to those areas that are largely undisturbed portions of shoreline areas such as wetlands, estuaries etc. The final rule reads: "Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, ~~marine~~ estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural.""

210(5)(a)

Add this language to the Natural Environment sections: "Ocean dunes that at the time of the adoption of these regulations have not been developed or built upon shall be designated as a natural environment."

Please see the "Natural" environment designation criteria in subsection 210(5)(a), which includes such areas as "coastal dunes" as representative of the natural environment.

210(5)(a)

There should be language added to this section that requires that any shoreline area that is important to the recovery and conservation of Threatened and Endangered Species should be designated as Natural for the entire shoreline jurisdiction.

To designate all areas that are important to the recovery and conservation of salmon as natural would be inconsistent with the policy of the SMA, which establishes a balance between use and protection.

210(5)(b) "Rural Conservancy" criteria

Delete the last paragraph in this section that allows mining in Rural Conservancy. It appears to contradict intent of that environment.

This section would replace the strong protection from mining and mining-related activities offered by a conservancy designation with vague standards that would bar mining only if citizens can prove that there would be "significant ecological impacts to shoreline ecological functions or ecosystem-wide processes." WAC 173-26-240(3)(h).

A guideline that would allow a shoreline previously designated "conservancy" to be mined or used for mining-related activities would be inconsistent with the goals and policies of the Shoreline Management Act (RCW 90.58.020). The proposed guidelines acknowledge that "[m]ining and the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses alters the natural character, resources, and ecology of shorelines of the state and may adversely impact critical shoreline resources." Despite this acknowledgment, the revised guidelines do not even address the impact that mining of a conservancy shoreline would have on "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state," as required under RCW 90.58.020. Mining can hardly be said to be "unique to or

dependent upon use of the state's shoreline" so it is difficult to understand how a guideline allowing conservancy shorelines to be mined could possibly be consistent with the goals and policies of the SMA.

Allowing conservancy shorelines to be re-designated for mining or mining related activity would also be inconsistent with RCW 90.58.100, which requires that master programs contain a "conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection." Ecology's existing rules state that "the objective in designating a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization" WAC 173-16-040. Preferred uses in conservancy environments are those which are "nonconsumptive of the physical and biological resources of the area." Id.

The revised guidelines are also inconsistent with the policies for shorelines of statewide significance. Mining operations in shoreline areas often involve the construction of piers and other transportation facilities on subtidal lands designated as shorelines of statewide significance. The guidelines appear to allow redesignation of conservancy shorelines for mining purposes without any demonstration that the mining use would be consistent with the policies for shorelines of statewide significance set forth in RCW 90.58.020.

This section would allow lands currently devoted to nonconsumptive uses and natural resource preservation to be diverted to natural resource extraction without any compensation in the form of enhanced protection for other shorelines. The end result will be a cumulative loss of conservancy areas and continuing degradation of the state's natural resources contrary to the goals and policies of the SMA.

Conservancy areas are supposed to be protected. You cannot be making regulations to allow industry to continue to destroy habitat. To allow this paragraph to remain on the books is to allow a foreign multinational corporation to make shoreline regulations for the state of Washington. To allow this paragraph to remain is to allow special interests to make the rules in spite of the good of the people and in spite of the wishes of the people.

73 percent of Puget Sound tidal wetlands have been lost along with at least 33 percent of eelgrass beds. We're spending countless amounts of money to restore habitat, and yet you are willing to bend to the demands of big business and a foreign multinational and jeopardize what is left. Take action to protect what is left of our shorelines. Delete this special interest-inspired paragraph.

The Maury Island shoreline, as Ecology is aware, includes habitat for Chinook, herring, surf smelt, rockfish, lingcod, and pacific cod. It is per Washington Department of Fish and Wildlife "unique and diverse habitat." Worse yet, the language Glacier Northwest has proposed opens other shorelines in the state to destruction by a non-water-dependent industry, sand and gravel mining. A special interest swayed Ecology to insert new language that seriously damages the intent of the shoreline rules. Powerful interests were listened to and alienated those of us who support salmon recovery and strengthening of the rules.

Sand and gravel mining not only contribute to major environmental problems at the mine site, such activities contribute to the construction, growth and sprawl that is undermining habitat and watershed protection elsewhere in the State. A ban on sand and gravel mining in or adjacent to shoreland areas would be a good place to start.

Mining should not be an uncontrolled alternative environment designation. It should fall in the rural intensive zone & be subject to those criteria. DOE should not offer a carte blanche exemption for shoreline mining. The GMA says nothing about allowing mining in shorelines.

Nothing in House Bill 1724 suggests that Ecology's shoreline guidelines should be relaxed so as to facilitate mining of areas designated as "mineral resource lands" in comprehensive plans developed by local governments. Instead, it requires cities and counties to designate "mineral resource lands" in a manner consistent with the goals and policies of the SMA and with the designations previously made in their SMPs. It does not require, or even permit, local governments to weaken their SMPs to allow for land uses that are provided for in the comprehensive plan but which are inconsistent with existing designations in the SMP. On the contrary, local governments must review their comprehensive plans relative to land adjacent to shorelines "so as to achieve a use policy on said land consistent with the policy of the SMA," and the guidelines and master programs adopted thereunder. RCW 90.58.340.

Ecology suggests that revised guidelines would not significantly weaken existing protections because any redesignation of conservancy shorelines must be approved by Ecology before it becomes effective. But by creating a special exemption allowing the re-designation of conservancy shorelines for mining use, the regulation creates a de facto presumption in favor of mining if an applicant can make a showing that the criteria in proposed WAC 173-26-240(3)(h) are met. The regulation will effectively shift the burden to local citizens who oppose a redesignation to prove that a particular mining operation will cause significant ecological impacts. Because the criteria in proposed WAC 173-26—240(3)(h) are qualitative and depend on subjective judgments regarding the "significance" of ecological impacts, virtually any area presently designated as a conservancy environment could conceivably be re-designated for mining.

The SMA is based on balancing economic and environmental interests in the shoreline. Sand and gravel are basic resources for a healthy economy. In some parts of the state the only location with significant quantities of gravel are in the river valleys and therefore wholly or partly within shoreline jurisdiction. While the use should be accommodated, the overall provisions of the guidelines assure that any mining that is initiated after the adoption of new SMPs will properly protect shoreline environmental resources and be consistent with the goals and policies of the SMA. One of the fundamental purposes for preparing new guidelines is to assure coordination between GMA and SMA planning. For the guidelines to fail to recognize the provisions of GMA relating to mineral resource lands would in part defeat this purpose.

Neither these guidelines nor the Shoreline Management Act exempt mining from regulation. Regardless of what shoreline environment designation mining is allowed in mining must conform to the requirements of these guidelines. Please refer to sections 173-26-240(3)(h) and 173-26-340(3)(h) for the mining regulations.

210(5)(b)

Paragraph 5(b) was inserted for the benefit of one multinational corporate entity in their effort to mine Maury Island for gravel and at the request of this corporation's attorney. This paragraph does not represent what is good for the shoreline environment of Maury Island. It jeopardizes shorelines across the entire state just to allow this company to mine on Maury Island. The repercussions of paragraph 5(b) will be found far beyond the shores of Maury Island. You're opening up a Pandora's box for abuse of the shorelines throughout Washington.

Ecology suggests that proposed WAC 173-26-210(5)(b) "does not provide Glacier Northwest with any new or additional opportunity not otherwise allowed for by the Shoreline Management Act." However the revision was made in response to a February 15, 2000, letter from Ryan Durkan, an attorney for Glacier Northwest. If the revision to the guidelines provides no

additional opportunities for redesignation of conservancy shorelines for mining purposes, one wonders why Ms. Durkan has argued so vociferously in favor of such a revision?

The comment from Glacier Northwest's attorney was one among many Ecology received during an informal comment period that resulted in a change to the rule. Ecology accepted the comment because it was legitimate and we determined the issue was not adequately covered in our earlier drafts of the rule (see response directly above).

210(5)(b)

This change was accepted by DOE without citizen discussion and DOE claims this paragraph is ironclad because it conforms to the GMA. The GMA does not state that mineral resource extraction is a water dependent industry.

Neither the GMA, the SMA, nor these guidelines state that mining is a water dependent development.

210(5)(b)

Reinstate 173-16-050(4) where you find a guiding principal for the islands that allowed us to feel comfortable that the guiding principal was to protect our habitat on the island, which is separate from the main land and has special needs. This paragraph is important for those of us who live on the islands and I ask you to reinstate it. It's important for islands, it's important for the main land, and it's important for the bureaucrats that have to enforce it to have a guiding principal that says that we have to take special care of our islands.

The opening sentence of the SMA declares that "shorelines of the state are among the most valuable and fragile of its natural resources." Ecology believes the new requirements to protect ecological functions will provide greater protection for *all* shorelines than the requirements found in the 1972 guidelines (Chapter 173-16 WAC). This will include greater protection for islands where scientific analysis shows that is appropriate. The Shorelines Guidelines Commission decided early on not to carry forward from WAC 173-16 the entire "Natural Systems" section [173-16(050)] because over the past 28 years, it did not add value to SMPs.

210(5)(b)

Section -240 3 (h) (iv) states: "Surface mine reclamation plans shall provide for subsequent use of the property that is consistent with the policies of the environment designation in which they are located and shall assure that ecological functions of the shoreline are restored." If an environmental designation of 'mineral lands of economic importance' is an option, then mining (and its "activities such as processing and transportation") will be an adverse impact on the shoreline. It will allow reclamation to occur with the continuation of trucking and barging activities on the shoreline along with some type of processing. It seems that this paragraph allows an expansion of existing mines to include their shoreline sites for future rock storage terminals from which they will continue to barge long after their shoreline sites are depleted. Mining is not a water dependent use and the new language could have far reaching implications.

Ecology has revised the rule to be consistent with the intent, which is that the reclamation use be consistent with the underlying environment designation not with the mining designation.

Ecology has revised the rule to read: "Lands designated as "mineral resource lands ~~of economic importance~~" pursuant to RCW 36.70A.170 and WAC 365.190.070 may be ~~designated as an alternative environment designation~~ assigned a subdesignation of "rural conservancy" environment that allows mineral extraction, provided the provisions for that designation conform to WAC 173-26-240(3)(h) and this chapter and protect ecological functions."

210(5)(b)

Ecology's existing guidelines require that designations and redesignations be made to "reflect local values and aspirations for the development of different shoreline areas" as expressed through the citizen involvement process. WAC 173-16-040(4)(a)(iii). The revised guidelines fail to require any consideration of the views of local residents before conservancy shorelines in their neighborhoods are converted to mining use. Under the revised guidelines, redesignations will likely be determined based on input from mining companies and their paid consultants rather than on the "local values and aspirations" of affected communities.

Ecology has revised the rule to address this comment. To Section 210 (2), "Basic requirements for environment designation classification and provisions," Ecology added the following provision: "Environment designations shall be assigned based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans."

210(5)(b)

Although WAC 173-26-190(2)(a) and 173-26-290(2)(a) underscore the Growth Management Act's requirement for mutual and internal consistency between local comprehensive plan elements (including SMP policies) and their implementing development regulations (including SMP regulations), the proposed rule fails to adequately provide for shoreline uses associated with mineral resource lands which are specifically protected by the GMA.

An important goal of the GMA is maintaining and enhancing natural resource-based lands, such as mining. The GMA directs local governments to designate mineral resource lands of long-term significance. Under RCW 36.70A. 170, mineral resource lands are those not already characterized by urban growth and have long-term significance for the extraction of minerals. In light of the clear GMA directive for mutual and internal consistency, the environmental designation system of the proposed rule is inadequate with respect to its recognition of mining activities, particularly in the rural conservancy designation criteria.

Mineral resource lands are found in many rural areas and frequently within shoreline areas. In many cases, mineral resource lands are also located within shorelines or mining operations are dependent upon barging to transport extracted minerals. However, in establishing the rural conservancy environment criteria, the proposed rule fails to provide for and protect mineral resource lands as directed by the GMA. The limited provision in WAC 173-26-210(5)(b), under Path A for mineral extraction (as an "alternative environment" designation) and the total omission of mining from WAC 173-26-310(5)(b) under Path B can only be viewed as inconsistent with the GMA guidelines.

Mineral extraction should be recognized as a potential resource-based used in the same manner as agriculture, forestry or recreational uses are explicitly included. (See Figure 6.) As a recognized potential use, appropriate controls may be placed upon mining activities as is done for other authorized uses. Both WAC 173-26-210 and WAC 173-26-310 need to be revised to clearly include mineral resource activities as permitted uses. Further, barge loading activity and related development (i.e., piers, mooring dolphins and conveyors) should be added as permitted uses in the rural conservancy areas.

Ecology attempted to address mineral lands of "long term commercial significance" in the last paragraph. In addition to being inadequate, it proposes to designate these lands as an alternative designation provided 240(3)h apply. What is not addressed is the

criteria in which a determination could be made. Are these determinations to be made as a special petition at the local level in accordance with the master program and subject to approval by Ecology? Given the original premise, in which these revisions were drafted, what ability does industry have to consider any reasonable expectation such an alternative designation would be granted?

While this clause may represent a morsel of hope, the ability of a small facility would not be able to withstand the process to obtain such a designation. For those jurisdictions that are dependent upon the geological occurrence of where sand and gravel are located (within shorelines and flood plains), would the applicant or jurisdiction have the ability to create the correct alternatively designated zones other than-rural conservancy? It becomes increasingly evident the revisions must address and consider the geology of the state as a whole and not just as "rural conservancy".

Designations must be the area where mineral resource lands are geologically available in the best interest of the general public. It is interesting to note "master planned resorts" may receive an alternative designation, as long as master programs "do not allow significant ecological impacts to the shoreline ecological functions." Again, a clear example of the wide range of discriminating equity and treatment given to mining uses in contrast to other uses.

AGC strongly supports the provisions allowing designation of "Mineral Lands of Economic Importance" in "Rural Conservancy" areas. This provision is absolutely necessary to ensure that adequate mineral resource lands are identified for extraction of needed natural resources like gravel and aggregate. This provision also ensure compliance with the GMA, which requires that local governments identify mineral resource lands and develop them in a rational, well planned manner.

Ecology has amended the rural conservancy environments to better coordinate the mineral resource lands designation and SMA environment designation. The language now reads:

"Lands designated as "mineral resource lands ~~of economic importance~~" pursuant to RCW 36.70A.170 and WAC 365.190.070 may be ~~designated as an alternative environment designation~~ assigned a subdesignation of "rural conservancy" environment that allows mineral extraction, provided the provisions for that designation conform to WAC 173-26-240(3)(h) and this chapter and protect ecological functions."

In addition, Ecology added a similar provision to the urban conservancy environment designation criteria. Ecology does not concur that mining is comparable to agriculture and forestry. Experience shows that mining has the potential to adversely impact shoreline resources and must be addressed.

Ecology has also added language in the section that describes basic requirements for environment designations [210(2)] to clarify that environment designations "shall be assigned based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans."

210(5)(b)

A characteristic needs to be added that addresses existing and future needs for transportation and utility corridors. Recommendation - Add the following language: The shoreline is served by transportation and utility facilities to accommodate existing and future populations.

The availability of infrastructure is identified in 210(3)(c) as a broad planning criteria. The specific environment designation characteristics are based on existing and planned use patterns and environmental character which would include existing utility and transportation considerations.

210(5)(b)

Where is "mineral resource lands of economic importance" defined?

Mineral resource lands of economic importance are defined in RCW 36.70A.170 and WAC 365-190-070.

210(5)(b)

Master planned resorts should not be designated as "alternate shoreline environments" in "rural conservancy" areas since it is highly unlikely that such developments can be constructed without "significant ecological impacts to shoreline ecological functions." If the construction of such facilities is allowed, and such impacts are detected at any point during their construction or operation, such facilities should be shut down immediately and their building and operating permits revoked. Such a possibility should be clearly stated in their building permit.

Ecology believes the provision is adequately protective. The rule reads: "Master planned resorts" as described in RCW 36.70A.360 may be designated an alternate shoreline environment**, provided the applicable master program provisions do not allow significant ecological impacts**.

210(5)(b)

The "rural conservancy" designation threatens to prevent redevelopment of currently abandoned commercial and industrial shorelines in Aberdeen and Hoquiam. It makes more sense to redevelop these sites than to develop greenfields in their place.

If the areas of concern are in Aberdeen and Hoquiam then they are not "outside of incorporated municipalities" as required for the areas to be designated in the rural conservancy environment. See Sec 210(5)(b).

210(5)(d) "High-intensity" criteria

Even in this environment, ferry terminals, as transportation venues, are not specifically included. [p. 45, (d)] "... if they currently support or are suitable and planned for high-intensity water-dependent uses related to commerce, transportation, or navigation."

Ecology has revised the rule to add the word "transportation." The rule now reads: "Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "rural areas of more intense development," as described by RCW 36.70A.070, if they currently support or are suitable and planned for high-intensity water-dependent uses related to commerce, transportation, or navigation."

210(5)(d)

Strike everything after 36.70A.70 which would restrict non-water-dependent uses. Some of us have commercial or industrial property with no water dependent or water related uses.

The "High Intensity" environment designation criteria do not prohibit non-water-dependent and non-water-related industrial or commercial development. Non-water-oriented uses may be allowed as stated in 173-26-210(4)(d)(ii).

210(5)(e) "Urban conservancy" criteria

These criteria conflict with giving water-dependent uses highest priority in the urban conservancy environment.

The "urban conservancy" environment is intended to be applied in locations where water dependent uses are impractical or inappropriate. However, it does not prohibit water dependent uses.

The rule has been clarified as follows: "Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that are ~~less~~ not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "rural areas of more intense development."

210(5)(f) "Shoreline residential" criteria

The "shoreline residential" designation is allowed only in UGAs, incorporated municipalities, rural areas of more intense development, or master planned resorts. In one fell swoop, the Guidelines take a vast amount of private land off the books. This particularly harms the rural and coastal jurisdictions that rely on residential development to provide additional tax base and housing for employees.

It is correct that residential development must be limited to the areas identified. However, allowance for residential development is provided in other environment designations at appropriate densities. The "Shoreline residential" is intended to provide for areas with relatively high densities of residential development.

220 General SMP Provisions

Throughout this section, particularly in Path A, minimum requirements are stated, such as consultation with department technical materials, but the word "should" is used instead of "shall." If they are truly minimums, then they should be mandatory.

Ecology's technical assistance materials will be available for use and should be considered. However these materials are not incorporated into the guidelines as requirements and over time, new and better materials may emerge from other sources which better address a particular issue.

220(1)(c)(i) Archaeological and historic resources

DOE does not have authority under the SMA to impose a condition that local governments must require a stop work condition on any excavation, especially on the basis of the unduly vague premise of "anything of possible archaeological interest."

DOE does not have authority under the SMA to impose a condition that local governments must require a site inspection and evaluation by a professional archaeologist and coordination with an Indian tribe for permits issued in areas containing archaeological artifacts.

RCW 90.58.100 (g) requires local master programs to include an element addressing historic, cultural, scientific and education values and the protection and restoration of buildings, sites and areas having such values. The office of Archeology and Historic Preservation advised that this is the appropriate manner to protect such resources.

220(2) Critical areas

The proposed rule includes a critical areas section with specific requirements for wetland buffers, mitigation, etc. The GMA specifically directs each local jurisdiction in the state to adopt regulations to identify and protect critical areas. However, the legislature did not meld critical areas and shorelines, nor did it establish a hierarchy placing shoreline rules "above" critical areas standards. DOE was expressly not given the authority to approve or reject critical area regulations. The proposed shoreline rule would force all local jurisdictions to essentially cede their authority over critical area regulations to DOE.

Ecology is expressly given authority to protect shoreline resources in RCW 90.58.020. The guidelines are specific to compliance with SMA policies and apply only to SMA jurisdiction. The use of the critical area format is intended to facilitate integration of the SMA and GMA. Local governments may keep SMPs and CAOs separate.

220(2)

The definition for critical areas should be moved to page 3 of the definition section for easier reference.

Because the critical area definition depends on another statute and WAC, Ecology believes it is better not to redefine it in the definition section of the guidelines.

220(2)

Critical areas should also include Channel Migration Zones and riparian areas.

In many cases critical areas may well include CMZs and riparian areas, however in this context, critical areas refer only to those areas defined by the GMA as critical areas.

220(2)(b)(ii)

The proposed SMA guidelines rely on and incorporate a "best available science" standard that is extremely vague and appears to incorporate as a regulatory standard an undefinable palimpsest of layers of competing and conflicting science. The term BAS exists in the critical areas section of the GMA. The term has been subject of much confusion and debate. Consequently, DCTED has initiated rule making to define this term. The separate or inconsistent use of the term BAS in the proposed shorelines guidelines will likely confuse, rather than clarify this issue.

The SMA and GMA have different statutory use of scientific information. For critical areas scientific and technical information must be used (SMA) and BAS included (GMA). To clarify this, Ecology removed the reference to BAS from Section 200(2)(a) that describes the SMA-required "scientific and technical information." The phrase "best available science" is now only used in the section on critical areas [220(2)].

220(2)(c)(i)(A) Wetland use regulations

The Guidelines attempt to regulate numerous actions already subject to local, state, and federal regulatory programs. This section, and in Path B, directs SMP wetland regulations to address a variety of uses to achieve no net loss of wetland area and functions. Not only are these uses currently regulated through grading permits, Sec. 404 permits, HPA permits, and building permits. The 1995 legislation that allowed DOE to review and potentially revise the SMP Guidelines was part of a comprehensive regulatory reform package designed to eliminate environmental permit and review redundancy. The Guidelines acknowledge this by stating that the "guidelines are directed toward more efficient planning, permitting, and environmental review and more effective resource management."

The actions regulated under this section are those likely to impact wetlands. If local governments already regulate these activities, then their review under the SMA will be consistent with other local regulations. If these activities are not currently regulated, then adverse impacts to wetlands will occur. Other state and federal regulations regulate some, but not all of these activities.

220(2)(c)(i)(A)

This citation is redundant in its requirements of "no net loss" of wetlands, in that these mandates are covered by United States Army Corps of Engineers federal regulation and Washington DOE state regulation for protection of wetlands and mitigation of impacts.

☒ The SMA is responsible for protecting wetlands associated with shorelines of the state. Whether federal regulations require no net loss of wetlands is irrelevant. The only other state statutes with specific wetland regulations are RCW 90.48 (Water Pollution Control Act) and RCW 76.09 (Forest Practices Act) and they do not regulate the same areas or activities as the SMA.

220(2)(c)(i)(A)

On existing lots that were platted decades earlier that are currently vacant and are covered with wetlands, the goal of no net loss of wetlands is unachievable and will therefore result in a taking. Island County agrees with the concept of no net loss of wetlands on newly created lots and supports the concept of wetland mitigation banking, but can not support a requirement that will result in the taking of property. The draft guidelines should provide additional language that includes the concept of wetland mitigation banking as a positive approach to achieving no net loss. If a property taking occurs because a development is not allowed to proceed pursuant to no net loss, DOE should be prepared to compensate property owners.

☒ The requirement to achieve no net loss of wetland area and functions does not prohibit all wetland impacts. Where a regulatory taking would occur, reasonable use exceptions can allow wetland impacts as long as adequate mitigation is provided.

220(2)(c)(i)(A)

The standard for wetlands of "no net loss" is too vague and unenforceable. Ecology does reference more specific standards (i.e. Ecology's Wetland Rating and Buffers Guidelines); however, there is no requirement to adopt these standards. Subsequently, it is foreseeable that local governments will utilize their existing regulations such as Critical Areas Ordinances and claim that properly functioning conditions will be met over some unspecified time frame through these regulations as adopted. It is unlikely that any of the adopted regulations would meet or exceed the specific measurable standards from any of the references cited in the DEIS (i.e. Knutson and Naef, 1997; May et al. 1997; and Wild Salmonid Policy FEIS). Also, Part IV (and Part III) will foster the continuation of site-specific and cumulative impacts for all areas that are within jurisdiction of the Shoreline Management Act. As a result, while Part IV of the Guidelines are an improvement over the existing regulations, they are not sufficient to protect and restore the habitat-forming processes necessary to salmon recovery. The DEIS recognizes this problem in several places by noting that "the rate of degradation will be slowed but not eliminated".

☒ "No net loss" is a planning goal. The intent is that local governments will achieve this goal. Ecology has revised the language from "consult" to require that local governments use the state-recommended rating system or a scientifically valid alternative. See response to comments under 220(2)(c)(i)(B) below.

The rule sets performances standards. Local governments will have to translate them into specific provisions that will protect ecological functions. It would not be appropriate at a state level to include specific measurable standards.

220(2)(c)(i)(A)

Alteration of wetlands in the nearshore area should specifically be prohibited where it is demonstrated through the use of best available science that the particular wetland area contributes spawning, rearing or over-wintering habitat to juvenile salmon or provides critical habitat for any other species of interest.

☒ Proposals to impact wetlands will go through the mitigation sequencing process. Prohibitions on specific impacts in this rule are not appropriate. There may be situations where impacts are unavoidable and compensatory mitigation will adequately offset the impacts.

220(2)(c)(i)(A)

Significant vegetation removal should include mining under chapter 78.44 RCW, just as forest practices, chapter 76.09 RCW, is listed.

☒ The provision allows vegetation removal, consistent with the FPA because such rules adequately address protection of wetland functions during forestry operations. Mining in wetlands is far more intrusive and requires full review.

220(2)(c)(i)(A)

Another bullet should be added to page 48 that would require use regulations to address uses that the physical, biological, thermal, or chemical characteristics of wetlands water sources that inhibit the recovery of Threatened and Endangered Species.

☒ Ecology has revised the last bullet in this section as follows: "Other uses or development that results in a significant ~~change of~~ ecological impact to the physical, chemical, or biological characteristics of wetlands." The term "ecological impacts" would include impacts to T&E species.

220(2)(c)(i)(B) Wetland rating or categorization

The Guidelines thwart local control because they prefer the use of state documents to establish critical area standards. With regard to wetlands alone, the Guidelines state, "local governments should consult the Washington State Wetland Rating System." (pp. 48, 121) (As noted earlier, "should" is in essence a mandate.) Notably, in a 1998 Department of Community Trade and Economic Development report, 70% of counties and 83% of cities do not use the state model guidelines for wetlands and buffers. This shows the importance of local control and decision making for actual application of critical area protections.

☒ Wetland rating or categorization is the foundation of wetland regulation because wetland protection standards are tailored to the category of wetland. The intent of the language in the guidelines is to ensure that local governments use a scientifically-sound method of categorizing wetlands. To clarify this, Ecology revised the language as follows: "Local governments should <X>consult <u>either use</u> the Washington State Wetland Rating System, Eastern or Western Washington version as appropriate, <u>or they should develop their own, regionally-specific, scientifically-based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. Higher quality/functioning wetlands should receive higher levels of protection. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed</u>."

220(2)(c)(i)(B)

This does not state why wetlands shall be categorized. This is likely to be used for determining mitigation for impacts to wetlands. If so, that should be stated, along with an explanation that the Category Rating is not a functional assessment, and that should likely be done if mitigation is necessary.

☒ Ecology has revised the language to clarify that "wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately" (see response immediately above).

220(2)(c)(i)(B)

Island County has adopted and implemented a CAO that regulates three different types of wetlands. The different wetland types are

based on existing hydrological, vegetation and soil conditions. The type is determined during permit review. If the revised regulations are intended to require a full inventory of all wetlands that includes identification of specific functions, rarity, etc. this is far beyond the ability of Island County. Please clarify to what level this rating/categorization is to be performed.

Ecology acknowledges the cost and capacity issues related to inventory requirements, and is pursuing funding for local governments. Wetland rating/categorization can either be done in advance, or as is more common, be conducted site-by-site as development is proposed in or near a wetland.

220(2)(c)(i)(D) Buffers

This section is too vague and unenforceable. Ecology should revise it with specific numeric and narrative standards that can be measured and enforced.

Minimum required buffer widths should be described (e.g. one SPTH). The SMP pathways do not discuss buffer width or setback requirements, which is a major flaw. This will create conditions across the state where an endless number of buffer width and setback requirements will be established causing confusion and enforcement difficulties.

There are many ways to develop and implement buffer protection standards. This section is intended to ensure that local governments develop scientifically-based buffer protection standards without imposing a one-size-fits-all standard. The character and widths of buffers necessary to protect wetlands will depend, to a significant extent, on how wetlands are categorized. However, local governments will be required to demonstrate that they included the pertinent scientific information in their buffer protection standards.

It is likely that this will result in a variety of buffer width and setback requirements across the state. This is the result of the variation in natural systems found across the diverse environments of Washington state. Enforcement is largely a local issue, so inconsistencies between jurisdictions is not problematic.

220(2)(c)(i)(D)

[at end of paragraph add] "Buffer widths are defined in local government critical areas ordinances and shall remain consistent with this chapter."

The intent is to require that buffers be set for wetlands in shoreline jurisdiction consistent with best available science. It woul not be consistent with the policy of the SMA to allow any continued application of CAOs that contain inadequate standards for areas within shoreline jurisdiction.

220(2)(c)(i)(D)

The requirement for a buffer around all wetlands is unreasonable in Grays Harbor County.

In my opinion "wetlands" is such a broad definition that it does not require a "buffer". "Buffer" is a bad classification, is open-ended, might easily be miss-used and should be stricken from this document.

The shoreline rule only applies to wetlands under SMA jurisdiction. Wetlands are defined and delineated based on specific, biological criteria. The majority of wetlands in Washington are not under SMA jurisdiction. Wetlands in Grays Harbor County are just as subject to degradation by adjacent land use activities as wetlands elsewhere in the state. The best available science is unequivocal that buffers are necessary to protect wetlands from adverse impacts of adjacent land uses.

220(2)(c)(i)(E) Mitigation

Natural processes do a far better job than any human engineering in maintaining critical habitat for threatened and endangered species. Although the current wetland permit programs assume that wetland loss is being ameliorated, no long-term interdisciplinary research shows unequivocally that a created wetland has fully replaced the lost function resulting from a wetlands destruction." Created wetlands do not provide in-kind compensation. Many hard-to-create wetland types such as fens, bogs, and sage meadows, are being replaced with common, easy-to-create wetland types such as cattail marsh, where the quality of the resulting mitigation wetland is not equal to the wetland that was destroyed.

Placing mitigation projects in areas distant from the destroyed wetland will result in the wetland functions being replaced in areas away from the area where they are needed and/or in areas that are not wetland-efficient. We talk about using the best available science to make our decisions, but the best available science says that we cannot replace wetlands. And I would therefore request that items E and F from your definition of wetland mitigation requirements be removed as options. In other words, the idea of replacing. We must fix what we have destroyed and focus on that as an approach.

There are numerous instances where impacts to wetlands are unavoidable. In these cases, compensatory mitigation must be provided. While many mitigation projects have not succeeded, other have. It is the responsibility of local and state government to ensure that mitigation succeeds in order to address the unavoidable impacts that do occur.

220(2)(c)(i)(F) Compensatory mitigation

Compensatory mitigation is — as a landowner, when I read that, that means that the Department of Ecology is going to compensate me for the land that I lose.

Wetland mitigation is a concept that is frequently misunderstood. The term mitigate means literally "to make less severe or painful; to moderate" (Webster's). In the wetland regulatory context it essentially means to reduce the total adverse impacts of a project to an acceptable level. This can be accomplished through a variety of methods. Wetland mitigation is usually defined in terms of a series of steps that should be taken in sequential order (see definition –020(30) of this rule). Following this process is referred to as sequencing. Most people equate wetland mitigation with step (e) "Compensating for adverse impacts by replacing or providing substitute resources or environments." This has led to the use of the term "compensatory mitigation" to distinguish this type of mitigation from the broader definition.

220(2)(c)(i)(F)

Requirements for compensatory mitigation should be based on quality and quantity of the ecological functions lost at the impacted wetland, if the wetland has not been significantly altered. If the wetland has been significantly altered (e.g. drained) mitigation should be based on an unimpaired reference site that represents that wetland in an unaltered state.

Generally, compensatory mitigation is designed to replace the specific attributes and functions that will be lost or degraded at the impact site. Government cannot require replacement of functions lost from historical impacts not subject to current regulations. However, the use of reference sites is a common and valid method of establishing targets for compensatory mitigation projects.

220(2)(c)(i)(F)

Mitigation replacement ratios are not scientifically valid tools for compensatory mitigation. The replacement of ecological function is not related to an increase in acreage of mitigation. Further, the criteria

outlined limits and restricts the use of wetland mitigation banks in Washington through limiting out-of-kind mitigation and off-site mitigation.

This section does not restrict the use of wetland mitigation bank credits nor does it limit compensatory mitigation to in-kind. The use of wetland mitigation ratios is used as a surrogate for determining compensation requirements since a quantitative method for determining losses in the level of functions performed by wetlands is not currently available. This section does allow the use of an alternative method if one is available for determining compensation requirements.

220(2)(c)(i)(F)

The language to allow mitigation banks to compensate for unavoidable impacts should be stricken until there is data to demonstrate that these banks actually mitigate for impacts and result in "no net loss" of wetland functions.

Ecology supports the establishment and use of wetland mitigation bank credits to compensate for unavoidable wetland impacts, particularly in the context of watershed and comprehensive planning efforts. Recent studies show that over 300 wetland mitigation banks have been developed in the United States. While some early wetland banks failed to meet expectations, many banks currently operating are doing so effectively. Losses to the environment from potentially failing banks are minimized through a variety of protection measures such as financial assurances and phased release of credits under a wetland mitigation banking rule currently being developed (Chapter 173-700 WAC). The department supports wetland mitigation banking as a method to provide more ecologically beneficial compensatory mitigation.

220(2)(c)(i)(F)

Wetland mitigation bank credits should be allowed only in the same reach or estuarine shore or lake shore as the impacts.

Any use of wetland mitigation bank credits must be consistent with the bank instrument and certification for that bank. Specific service areas (those areas where projects are eligible to propose to use credits for unavoidable impacts) for banks will be identified in each bank instrument. The Wetland Mitigation Banking rule currently under development (WAC 173-700) identifies the criteria to be used to set a service area. This rule does not need to duplicate requirements already contained in another state rule.

220(2)(c)(i)(F)

Mitigation banks should not be allowed in an SMP. They must be required to be in the same watershed because wetlands are often contiguous hydrological structures and by interrupting them , it is like taking a segment out of a stream.

Many areas of the state are included in shoreline management areas. Ecology supports the use of wetland mitigation banks for attaining ecologically appropriate and successful mitigation. Bank service areas are based on hydrologic and biotic criteria and are consistent with the intent of the SMA.

220(2)(c)(ii) Geologically hazardous areas

Under 4th Para., a homeowner could build a bulkhead to protect an existing home only if no other alternative is feasible (including moving the house). The owner must prove that no other alternative is feasible, and must mitigate for any potential environmental impacts.

The SMA provides that SMPs "shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion." [RCW 90.58.110(6)]. This recognizes that such protection may be needed and should be anticipated. The rule could require applicants to disclose and complete any shoreline stabilization work reasonably needed to protect structures being constructed in shorelines, and to preclude approval of projects where necessary stabilization work does not meet reasonable standards. However, it is not appropriate to prohibit approval of projects based on speculation that additional, currently planned and unforeseen, stabilization work might become necessary at some unknown future time. Neither is it appropriate to prohibit protection of previously constructed facilities if changed circumstances, not foreseen at the time of their construction, requires additional protection actions to avoid significant safety hazards or economic losses.

This provision would remove significant amounts of land from the buildable land inventory around the state, even though such land may be required to meet the goals of the Growth Management Act. In addition, the unlimited scope of this requirement – no stabilization over the lifetime of the project – creates a nearly impossible guessing game for applicants. While the SMA does allow SMPs to "contain standards governing the protection of single family residences," the Legislature likely did not contemplate absolute bans on structural stabilization that would jeopardize safety, risk economic loss, and conflict with other land use planning laws.

The provisions addressed are intended to assure that shoreline stabilization is necessary, appropriately sited and designed and has the least possible impact on the environment. Professional evaluation and recommendations are the only legitimate means to assure those issues are addressed.

Ecology has revised the rule to clarify that the restrictions in this section only apply to critical areas identified under GMA as critically hazardous areas. The rule now reads: "Restrict new development ~~on unstable bluffs and river channel migration zones and landslide areas~~ in geologically hazardous areas. Consult minimum guidelines for geologically hazardous areas, WAC 365-190-080(4)."

The prohibition on developments that would require stabilization is not absolute. An exception is provided for instances where no alternative locations are available. The final rule reads:

"Exceptions may be made for the limited instances where stabilization is necessary to protect allowed ~~water-dependent~~ uses where no alternative locations are available and significant ecological impacts are mitigated.

Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible and less expensive than the proposed stabilization measure, ~~shoreline~~ stabilization structures ~~(including bluff walls)~~ or measures to protect existing primary ~~residences~~ residential structures may be allowed in strict conformance with WAC 173-26-230 requirements and then only if significant ecological impacts are adequately mitigated.

In such cases, the "softest" measure that effectively protects the structure shall be used. For example, bioengineering or vegetation enhancement shall be employed instead of engineered structures where they are effective. See section 230(3)(a)(i)."

220(2)(c)(ii)

The draft guidelines provide that master programs cannot ". . . allow new development [on unstable bluffs and river channel migration zones and landslide areas] that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect water-dependent uses.." Apparently no exceptions would be allowed for water-related or water-enjoyment uses or any other non-water-oriented uses. Substantial

amounts of undeveloped shorelines have either steep slopes, which project opponents could characterize as "unstable" or potential "landslide areas," or low-lying flatter terrain that project opponents could characterize as part of a channel migration zone.

Most residential, commercial and industrial developments, and public works projects, have a long and indefinite "life"; often many decades if not perpetual. It would be extremely difficult for permit applicants to "prove" that no structural stabilization would ever be required over the "lifetime" of a house, office building, etc. Structural stabilization can become necessary because of unforeseen natural or human events, including government or private projects upstream or downstream that are beyond control of the affected landowners.

The lifetime of a structure is often established for financing, if not other, reasons. The stability of slopes can be calculated to a reasonable degree. The intent is to reduce the need for expensive structural stabilization, to minimize risk, and to reduce the impacts of development in geologically hazardous areas. The guidelines provide a reasonable, implementable method to pursue these objectives.

220(2)(c)(ii)

Include protection of public facilities as allowable activity.

Ecology removed the words "water dependent" to clarify that the exception applies to *any* allowed use. The final rule reads: "Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed ~~water-dependent~~ uses where no alternative locations are available and significant ecological impacts are mitigated."

220(2)(c)(ii)

3rd Para. would prohibit new homes, even on existing legally created lots) in any area that would require shoreline stabilization over the life of the development. In effect, property owners would not be allowed to subdivide their land or to build on their existing property if it is suspected that a future bulkhead might be required. The property owner has the burden of proving that a bulkhead will not be required over the projected lifetime of the home (pg. 49).

Geologically hazardous areas are areas that clearly pose a threat to life safety for any resident. Where a house exists in such an area it is only reasonable that careful analysis be conducted before attempting stabilization measures. Further subdivision of the area is inconsistent with protection of the public health safety and welfare.

220(2)(c)(ii)

In the DEIS of June 2000, there is reference to "in" geologically hazardous areas and "on" unstable bluffs. This is disconcerting, because "in" and "on" the hazard area is insufficient regulation and protection. "Above", "below" and "next to" are equally vulnerable. Please add `and adjacent" to the text as "in and adjacent" and "on and adjacent" — or similar legal language to reflect geological reality and the nine volumes of scientific information the DOE has produced. Geologically hazardous areas will expand over geological time, sooner if something stupid is done by humans. If you build below, the land may slide onto you. If you build next to one, the owner can expand it by ignoring the CAO.

If you build above or next to, and do not control stormwater, septic water, swimming pool water or planting, you may find the hazard expansion taking you down to the beach. All these may occur within the 200 feet that is all the SMA regulates; all may be triggered by human action 300 feet or more above the area mapped in the Coastal Zone Atlas. All may be triggered without any significant wave action.

Ecology has revised the rule to clarify that the section address all identified geologically hazardous areas. The concerns of this comment will be addressed to the extent that local governments have identified areas "above," "below" or "next to" unstable slopes as geologically hazardous.

220(2)(c)(ii)

This prohibits shoreline armoring to protect a home only if it can't be relocated. This would be very expensive for homeowners.

The provisions addressed are intended to assure that shoreline stabilization is necessary, appropriately sited and designed and has the least possible impact on the environment. Professional evaluation and recommendations are the only legitimate means to assure those issues are addressed.

220(2)(c)(iii)(A) Critical saltwater habitats

The definition of critical saltwater habitat must include aquatic vegetation. The exclusion of "aquatic vegetation" does not make sense. The language of the proposed rule does not protect nearshore habitat.

The definition includes aquatic vegetation, but is only intended to include "critical" saltwater areas, not all saltwater areas. The first sentence has been amended as follows: "Critical saltwater habitats include <u>all</u> kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, <u>smelt and</u> sandlance, ~~and smelt~~, commercial and recreational shellfish beds, <u>mudflats, intertidal habitats with vascular plants</u>, and areas with which priority species have a primary association."

220(2)(c)(iii)(A)

The first paragraph is written to suggest that saltwater habitats have a higher level of protection than freshwater habitats. The Guidelines and the DEIS should provide some explanation, analysis, and data to support this implication.

The sentence in question says "critical saltwater habitats require a higher level of protection due to the important ecological functions they provide." The intent is that critical saltwater habitats require a higher level of protection than <I>other saltwater habitats, not a higher level of protection than other critical areas such as freshwater habitats.

220(2)(c)(iii)(B) Principles

Change the name of this section from "Comprehensive Saltwater Management" to "Principles," to be consistent with other sections.

Ecology has revised the title. The section is called "Principles" in the final rule.

220(2)(c)(iii)(B)

Has the value of habitat studies been verified? These Proposed Guidelines ask property owners to fund studies to support habitat. Has it been shown that studies will result in improves habitat versus Best Management Practices that can be adopted, thus avoiding site specific studies?

Habitat studies are important where the extent of habitat resource is unknown. The intent of critical saltwater habitat provisions is to encourage a comprehensive approach, rather than a case-by-case approach. A comprehensive approach could result in BMPs that would avoid the need for site-specific studies.

220(2)(c)(iii)(B)

This section should discuss what happens to shellfish beds that exist but are not suitable for harvest. These areas still need to be

protected so that they can be used for harvest in the future. Otherwise restoration opportunities could be foreclosed.

Identification of critical salt water habitats is determined at the local level. The fact that shellfish are not currently being harvested in a particular area does not necessarily preclude that area being identified as a critical area.

220(2)(c)(iii)(B)

Add another bullet: "Correcting excessive sediment input, where human activity has lead to mass wasting, by planting vegetation or other approved mitigation measures."

Ecology has added the following bullet to the list as requested: "Correcting activities that cause excessive sediment input where human activity has led to mass wasting."

220(2)(c)(iii)(B)

This section is not clear on whether suitability for shellfish harvest includes water quality and current use or just bathymetry and substrate. Most nearshore waters can be considered suitable for shellfish harvest because they are shallow flats. However, existing water quality conditions, including temperature, turbidity, and salinity may already preclude waters from shellfish harvest and should not therefore be considered suitable.

The general standards require a comprehensive approach to protecting critical areas such as shellfish habitat. All relevant factors including water quality, sedimentation and temperature parameters, are to be considered in determining suitable shellfish habitat. Hatchery, nursery and growout areas all may have seasonal limiting factors with regard to their utilization, however, they may provide a necessary support function, e.g. depuration, relaying areas, seed and brood stock, etc.

220(2)(c)(iii)(B)

Add last bullet to list of management planning issues: "Retaining necessary shoreline protection for existing infrastructure facilities."

The purpose of the plan described in this section is the protection and restoration of critical saltwater habitat. Addition of the text proposed would be out of context and inappropriate in this section. The issue is addressed by the provisions of the "Standards" section (C).

220(2)(c)(iii)(C) Standards

Rename this section "Standards" (instead of "Conditions for Development" in June 2000 public comment draft).

Ecology has revised the name of the section to be consistent with other sections. The Section is now identified with the capital letter C.

220(2)(c)(iii)(C)

Every year, thousands of docks in the state are in need of periodic maintenance and repair. The provisions associated with dock construction and repair would limit recreational opportunities and create a tremendous burden on local governments. Under the proposed guidelines, docks could not be built around saltwater habitat unless the applicant and local government went through a lengthy, subjective set of criteria. Requiring local governments to regulate the design and materials for dock construction is unnecessary and duplicative. This is because the construction of docks will require a state permit under the Hydraulics Act, and possibly federal permits for in-water work that will trigger consultation under ESA Section 7.

Both the HPA program under the Washington Department of Fish & Wildlife and the Section 7 consultation process are being reviewed with a goal of streamlining the permit process. Just during the past year, applicants have frequently changed the design or materials used in a dock to satisfy Section 7 requirements. Adding another layer of regulation under the SMA for homeowners and the dock construction/repair business serves no meaningful purpose, but simply increases the workload for local governments and the costs to property owners.

The requirement to regulate uses and development, including docks, is contained in the SMA as it was passed in 1971 and is not being changed by these regulations. The SMA exempts normal maintenance and repair from the requirement to obtain a substantial development permit. This section concerning critical saltwater habitat was developed in consultation with WDFW. Path B was developed in consultation with NMFS and USFWS. The goal and expectation is that the process will be simplified by assuring that these independent laws are coordinated to the extent feasible in a regulation.

220(2)(c)(iii)(C)

These Guidelines should reinforce good planning and prudent coordination, not be contrary to them. It is not appropriate to delegate to local government a "veto" power over those planning decisions. If a project will cause significant ecological impacts to critical saltwater habitat, local governments retain the authority to require the applicant to mitigate the impacts or to deny the permit altogether. This is sufficient, without giving local government the ability to compel an applicant to consider a different site for the proposed development. The Port thus recommends that Ecology eliminate this provision.

The regulatory authority of local government in this regard is established in the SMA and the GMA and is not changed by these regulations. Within that authority is the responsibility to consult interest parties, including ports, as they craft the policy and regulatory provisions of their master programs.

220(2)(c)(iii)(C)

Docks are restricted over critical saltwater habitat, as "[p]iers and docks shall be allowed only for water-dependent uses or public access." In essence, single-family residential docks are prohibited.

The docking of a boat is a water dependent use and therefore docks for that purpose associated with a single family residence are not prohibited.

220(2)(c)(iii)(C)

This section specifically labels utility crossings as human-made structures that "shall not intrude into or over critical saltwater habitats", except when serving a water-dependent use. It is not immediately clear if this also applies to utility lines "under" critical saltwater habitats. PSE's facilities make several underwater crossings and overhead crossings of Puget Sound and Hood Canal. If so, this will constitute a extreme limitation on utilities, especially in light of the potential extent of habitat involved for listed salmonid species. Considering that all other types of development restricted in the 'Conditions for development' section create permanent impacts to habitat, while utility lines typically create temporary disturbance, this limitation is excessive. Utility extensions would not be allowed even in those instances where no alternative alignment exists and adequate mitigation would be provided. Recommendation - Delete "utility crossings" from this paragraph.

Ecology has revised the rule to clarify that the standard was not intended to prohibit all utility crossings of salt water areas. The rule now reads: "Docks, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except ~~for a water-dependent use, ecological restoration, or public access and~~ when all of the conditions below are met…"

In other words, if a public need is demonstrated, it doesn't matter what the use is, so long as the conditions are complied with.

220(2)(c)(iii)(C)

On p. 51, add last bullet to list of conditions: "The project is consistent with providing necessary public services to an area zoned for development."

Ecology believes the provision that "The public's need for such a structure is clearly demonstrated" addresses the issue.

220(2)(c)(iv) Critical freshwater habitats

Change the name of this section to acknowledge that riverine corridors are a subset of GMA-designated "Critical freshwater habitats."

Ecology has revised the title to add the phrase "Critical freshwater habitats."

220(2)(c)(iv)(B)

This citation states that; "…Applicable master programs should contain provisions to protect and restore hydrologic connections between water bodies, water courses, and associated wetlands…" Research conducted by Dr. Bayley and others concur with such a philosophy. Aggregate development, which the regulations appear to discourage, is an avenue to achieve such a goal. Reclaimed sites provide interconnection of mine ponds, wetlands, natural back channels and floodplain environments once degraded and isolated by agricultural, channelization, and residential practices.

Ecology agrees that in appropriate settings and circumstances, mining may help restore degraded habitats.

220(2)(c)(iv)(B)

I saw no provision for compensation for potential "taking" that is implied by many of these rules. This issue ought to be addressed by the State, as these changes are originating from the State; most Counties are in no position to consider possible compensation. The only place I saw a weak reference to compensation in this section "Incentives should be provided…" and it was specific to one item only (as to be expected, it also did not specify what the incentives would be or where they would come from).

The establishment of a compensation fund such as this comment suggest is beyond the scope of this rule and would require legislative action. Also, for reasons stated elsewhere in this responsiveness summary, Ecology does not agree that implementation of these guidelines will result in any taking of private property.

220(2)(c)(iv)(B)

The second to last paragraph is inconsistent with the definition found on page 3, Section 020, part (8). We would agree that master programs should contain provisions to protect and restore hydrologic connections between water bodies.

If the commentor is indicating that such areas would normally be in the CMZ and thereby not subject to development, then Ecology agrees that this is true in many cases. However, there are some exceptions. Also, the guidelines stress the importance of off channel connectivity.

220(3)(b) Flood hazard reduction principles

The activities of diking and drainage districts have been recognized as exempt with respect to maintenance and repair of ongoing activities. See "Substantial development", as defined in RCW 90.58.030(x), excepting operating and maintaining any system of dikes ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as part of an agricultural drainage or diking system. The proposed regulations acknowledge these systems and repeatedly refer to public access to the shoreline and protection of threatened and endangered species as the priority concepts in the SMP. The principles stated in subsection 3(b) contradict language of riverine corridors. Restoration of hydrologic connections among water bodies, watercourses, and associated wetlands protect the developed flood plain in Skagit Co. These developments, including residential use, agricultural use, and mixed rural development, may be catastrophically affected by restoring hydrologic connections.

Skagit County has opted to regulate the "floodway", defined at RCW 90.58.030(2)(g) which states that "the floodway shall not include those lands which can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state." Skagit County and its cities have made independent determinations that parts of the 100-year flood plain outside of the floodway not be included in the Master Program. As a consequence, approximately 100,000 acres are in a flood plain which the proposed regulations appear to target for planning and regulation.

See Response to Definition –020(26) regarding exemptions. The provisions regarding Flood Hazard Reduction are designed to provide for the safety of the public while, within the overall context of the SMP, protecting shoreline resources and fostering restoration of ecological functions where feasible and appropriate. Feasibility and appropriateness include consideration of impacts to existing uses. The inclusion of this section was specifically required by the legislature in RCW 90.58.100(2), which states, "The master programs shall include, when appropriate, the following... (h) An element that gives consideration to the state-wide interest in the prevention and minimization of flood damages..."

The jurisdictional area of the act is not being and cannot be changed by the guidelines nor can the planning and procedural requirements be ceded to other authorities. These requirements are established in statute and have not changed since 1971.

The intent of these provisions is to provide coordination among the various applicable laws. The Guidelines do not alter the ability of the County to designate the jurisdictional area adjacent to rivers within the options provided in RCW 90.58.030(2)(f). They do require that planning be done with recognition of the larger context, beyond shoreline jurisdiction, that impact shoreline resources.

220(3)(b)

Flood plain agriculture and forestry are not necessarily associated with loss of habitat. Rather, they provide a choice of habitat. For example, waterfowl in the Skagit Watershed have been greatly benefited by agriculture directed toward snow goose habitat, trumpeter swan population growth, and many species of ducks. Students of raptors and owls find the Skagit floodplain to be rich in the diversity and quality of the species. Not all land can be in public ownership. Private, nonprofit corporations have limited resources. The SMA should recognize the balance between economic activity by taxpaying, job-producing enterprises and the role of public ownership and private, nonprofit management. Land suitable for floodplain agriculture and forestry is not exclusively a playground for urban residents. Rather, it is an opportunity to mix the limited and high priority investments represented by public and private, nonprofit ownership with compatible economic enterprise.

The Shoreline Management Act establishes a policy to achieve balance between economic development and environmental protection. The focus of this rule is on restoring an appropriate balance because of ample evidence of harm to shoreline ecological functions

and the increase in risk to property and human life over the past thirty years.

220(3)(b)

The regulations, as proposed, make the assumption that habitat change, including diking and drainage improvements administered by municipal corporations, are negative. Protection of threatened and endangered species is presumed to depend upon returning altered habitat to its unaltered state. These assumptions are not warranted. Nature changes habitat by natural annual cycles, which include earthquakes, volcanic activity, fire, mud flows, floods, and droughts. Erosion, transport, and deposition of soil are unavoidable occurrences, even in a totally natural environment.

The Shoreline Act shows solicitude toward single-family residences and the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines. It makes no specific reference to the importance of industrial forestry and floodplain agriculture to the shoreline environment. These industries have the potential to be integrated with the favored activities protected under the Shoreline Management Act. Such a change may require legislative action, but can be fostered by interpretation and rule adoption which recognizes the "overall best interest of the State and the people generally".

The guidelines as a whole recognize the value of farms and forestlands as potentially compatible with protection and restoration of ecological functions. The guidelines do not presume that all habitat change is negative nad that the only means to protect species at risk is to return altered habitats to an unaltered state. However, the decline of species does indicate many changes have been negative. The guidelines ask local governments to try the understand the ecological functions and make use of shorelines in ways that reduce future harm.

220(3)(b)

In the Skagit River drainage, a substantial $4,000,000 commitment has been made to study the hydrology of the Skagit River and to develop a flood damage reduction program. That program, as designed, includes setback levees and restoration of some corridors. The level of investment involved is in the tens of millions of dollars and involves political commitments to tax the general public. If Ecology and the SMA rule are blueprints for Public Works, then the prescriptions found at page 52 would be acceptable to those working and living in the floodplain. However, to advocate dike removal, use relocation, and restoration of wetlands without financial means and without the scientific resources associated with the U.S. Army Corps of Engineers and Federal Emergency Management Agency is short sighted.

To the extent that the SMP attempts to look forward to changes in the dike and drainage functions, it does provide guidance, compatible with U.S. Army Corps of Engineers hydrology studies and flood damage reduction engineering. For the present, the Districts need to be able to function for the benefit of their taxpaying land base and respond to an emergency in such a way that repair and rebuilding of existing structures is done with the support of the U.S. Army Corps of Engineers and Federal Emergency Management Agency. The regulations minimally recognize these realities of the flood damage reduction function which the districts perform. A better regulation would adopt by reference the standards employed in these federal agencies to coordinate local efforts within national programs.

The regulations use the word "consider", with respect to the principle that flood hazard reduction provisions be integrated, including, for example, storm water management plans and flood plan regulations, Critical Area Ordinance, and Comprehensive Plan, and NFIP. If the Master Program does not cede jurisdiction over the flood plain within diking districts and sub flood control zones or drainage districts providing artificial drainage, then the Shoreline Act will simply add another layer of complexity to a regulatory system which extends from county critical area ordinances to federal Clean Water Act and wetland regulations to the ESA. Too many agencies have entered the field and too little coordination of effort has occurred. These regulations appear to be another example of overlapping jurisdictional creep, which confuses and re-regulates land and uses which are already subject to multiple regulatory schemes.

Ecology expects that local SMPs in the Skagit River drainage basin would be based in part on use of existing studies. Among the Principles for flood hazard management [220(3)(b)(ii)] is a requirement to "Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter."

220(3)(b)

Suggestion: expedite approvals for certain types of utility work (and perhaps even better protect the shoreline environment) by instituting general permits or blanket authorizations. This would allow utilities to proceed with standard, low impact work within waterways but with a notice provided to the appropriate agencies of the location and type of work. The affected agencies could do follow up inspections and utility projects would not be delayed because of permit processing time. The agencies would have the option of revoking the general permit or blanket authorization to ensure the utilities remain accountable for proper construction methods and follow up site restoration. For more complex projects, the normal permitting process would apply. All restoration related to project impacts needs to be proportionate and reasonable to the subject development.

Permit procedures of the SMA are established in statute and cannot be changed by these guidelines. The SMA currently does not provide for general permits. It would require an action of the Legislature to authorize their creation.

220(3)(c) Flood hazard reduction standards

In addition to the restrictions on conversions of timber and agricultural land to residential use (which primarily impacts the future of rural county development), development in a CMZ is restricted in rural areas. The proposed rule directs ecologically intact areas to be designated as "Natural," and therefore off limits for development. On the other hand, areas within cities that are more urbanized can be designated for industrial, commercial, residential, and/or mixed-use development. Subdivision or development of land within the jurisdiction of the SMA is not allowed if it would require structural flood hazard reduction measures in a CMZ, unless the land is located in a city or urban growth area and already has a man-made structure that prevents channel movement.

In other words, property behind a bulkhead in a city CMZ can be developed and subdivided, but property behind a bulkhead in a rural CMZ is not accorded similar treatment. This differential standard does not make sense to us. We request DOE to delineate the Best Available Science that justifies this differential treatment.

Encouraging development in previously developed areas while preserving less developed shorelines is the policy expressed in the 1972 SMA guidelines. A similar policy, not limited to shorelines, is an underlying principle of the GMA as expressed through the requirement for designation of urban

growth areas. These guideline carry forward and incorporate this fundamental policy in order to provide for consistency with the GMA and to preserve the environmental values of the shoreline.

220(3)(c)

If I cannot protect my property from flooding without first consulting Ecology or other agencies then I am totally against this revision of the SMA.

It is advisable to consult all relevant authorities before undertaking flood control activities. Uncoordinated individual efforts with no regard for off-site impacts can have severe consequences for other landowners, natural resources, and river hydraulics.

220(3)(c)

It appears that the proposed regulations also attempt to eliminate any flood control structures. Again, it refers to the channel migration zone (100 year flood elevation). This would be devastating to some areas within the state. Flood control structures reduce flood impacts to shorelines and protect the habitat along rivers. They are beneficial and should not have the proposed restrictions placed on them.

The rule will not eliminate any existing flood control structures. The intent is that when they are built, they are built in a way that doesn't harm shoreline resources. There is significant evidence that flood control structures can harm ecological processes if not designed carefully. The guidelines do acknowledge existing structures and allow structures outside the CMZ. There are also exceptions provided within the CMZ. See sections 220(3)(c)(i) and (ii).

220(3)(c)

Allowing new agricultural practices "provided that no new restrictions to channel movement occur" (third bullet), will allow removal of vegetation, grading, and use of fertilizers and pesticides. In an effort to integrate GMA and SMA perhaps new agricultural development should not be exempt. As written, this line is confusing as it is included in a list of "new development", but is for "existing and ongoing."

The section addresses flood hazard management. The sections on vegetation conservation and agricultural use addresses the issues of concern in this comment.

220(3)(c)(i)

Agriculture should not be exempted from these standards. In addition, it is inappropriate to allow development on previously altered sites where the only standard is a "more natural condition". Because there is no benchmark for what constitutes "more", an insignificant increase in function can be allowed. We suggest that a more natural condition be changed to a "significant increase in natural condition."

Agriculture is a reasonable use of the floodplain in many circumstances as it can be conducted compatibly with floodplain hydrology and is a common existing use in floodplain areas. Allowing development on previously altered sites is a means to achieve restoration. All such development must be established and conducted in a manner that is compatible with preservation of ecological functions and other shoreline values.

220(3)(c)(i)

Subsection (3)(c)(i) discusses standards for flood hazard reduction. It prohibits any new development or uses in shoreline jurisdiction that will require structural flood hazard reduction measures within the channel migration zone. This means that there will not be allowed any new dikes, levees, revetments, floodwalls etc. Although there is an exemption for modifications or additions to an existing legal use, the exemption is limited to only those that cause no further restriction in the channel migration.

The observation is correct as applied to the CMZ.

220(3)(c)(i)

This subsection allows too many exemptions to the flood hazard reduction standards and could result in additional structural flood hazard measures within the channel migration zone to occur without mitigation.

Section 220(3)(c)(ii) adds mitigation requirements and adherence to flood hazard management plan that address cumulative impacts.

220(3)(c)(ii)

Subsection (3)(c)(ii) sets forth vague prohibitions on when new structural flood hazard reduction measures will be allowed within the shoreline jurisdiction. It is unclear who will determine when nonstructural measures are feasible and who will perform the scientific and technical analysis required.

"Feasible" is defined in section 020(18). The local government will determine how such studies are conducted.

220(3)(c)(v)

The term "unacceptable and unmitigable environmental harm" is not defined.

Ecology has revised this section to replace the term environmental harm with significant ecological impacts, a term identified in 020(47). The language now reads: "Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable ~~environmental harm~~significant ecological impacts, ~~significant~~ unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development."

220(3)(c)(vi)

Subsection (3)(c)(vi) discusses the removal of gravel for flood management purposes. It sets no criteria for size of stream nor any recognition of emergency/urgent situations requiring removal of gravel to restore a channel or improve ecological function. For many small streams, with minimal expected impact, the required hydrogeological study would be cost-prohibitive.

This section applies to gravel removal as a use and not as an emergency measure. The requirements of the rule only apply to streams that fall within the jurisdiction of the SMA. If a local government has many streams that require gravel removal, a comprehensive approach with geomorphologic analysis is crucial, since the impacts to habitat, river processes, and properties downstream could be severe.

220(3)(c)(vi)

This section has two problems. First the term "long-term" is not defined. Second, this section should not allow gravel removal since this activity degrades fish habitat.

The term "long term" does not require definition because how it should be applied depends on local circumstances. The removal of gravel is only allowed if it is found not to degrade fish habitat.

220(4) Public access

This section mandates provisions for public access for most shoreline activities without reference to an essential nexus or rough proportionality to project impacts. The SMA requires a balancing of environmental objectives and private property rights. Permit conditions requiring public access have been found unconstitutional. The rule requires

public access for most uses. This goes beyond what the SMA requires, which is public access to publicly-owned shorelines. The state should acquire private shoreline property for public access by condemnation & not allowing heirs of present owners to retain that property. Page 54 appears to allow public access to private property. If Ecology wants more public access it should lobby the legislature to purchase and develop such access.

Assuring public access to the water areas of the state is a fundamental purpose of the SMA and the provisions of this section implement that purpose. The provisions require careful planning and full consideration of legal and practical issues related to public access. Permit conditions requiring public access have been applied to numerous projects since inception of the SMA and no such condition has been overturned by the SHB or the Courts for failure to comply with constitutional requirements. The major water areas of the state are, for the most part, publicly owned.

220(4)

The rule must assure all shorelines are publicly owned from now on.

The suggestion is beyond the scope and authority of the rule and the department of Ecology.

220(4)

The rule must be reworked to maximize the amount of publicly accessible shoreline.

That is one of the policy goals of the Shoreline Management Act and this rule, as stated in 173-26-220(4).

220(4)

We believe the public esplanade along the Foss Waterway may not be permitted by the proposed guidelines and marina development could face the same difficulties.

Conceptually, the Foss Waterway esplanade is consistent with the provisions of the guidelines. Some additional restoration of shoreline vegetation or other mitigation may have been required if the project were being review under a master program adopted under these guidelines. Because it is in the water, marina development is difficult today and will certainly not be made less so by these guidelines. However, as a water-dependent use, marinas are given preferential treatment in the guidelines.

220(5) Shoreline vegetation conservation

The vegetation conservation requirements effectively deny use of vast areas of private property without compensation.

Ecology does not agree that the vegetation conservation requirements deny landowners the use of their private property. The intent of the vegetation conservation zones is to protect and restore the ecological functions and ecosystem–wide processes performed by vegetation along shorelines. In general, the guidelines allow for a variety of activities within the zones so long as they are consistent with the overall goal. The vegetation conservation zones are not "no-touch" areas.

220(5)

The proposed rule mandates that local SMPs (even in "Path A") establish minimum vegetation conservation standards that may include buffers, setbacks, clearing and grading standards, environmental designation standards, etc. (p. 58). The proposed rule requires local governments (even in "Path A") to require buffer zones around wetlands (p. 48). This language may conflict with Chapter 90.58 RCW which exempts modest filling of wetlands for single-family residential projects. We want DOE to specifically delineate the Best Available Science that mandates the "buffer" language which is contained within this proposed rule.

As stated in the DEIS, "…The requirements for vegetation conservation which apply more-or-less across-the-board to most shoreline developments will, more than any other provision in WAC 173-26, result in substantially lower rates of habitat loss and degradation from new development than any other element of the proposed rules…" This proposed regulation creates a vegetative setback, limiting development and impact. This should have minimal impact on the aggregate industry as long as the shoreline jurisdiction remains within the 200-foot definition. However, if jurisdiction is extended beyond the 200-foot boundary, this zone of no impact could prevent development by requiring no removal of vegetation.

Limiting the removal of vegetation on waterfront property or not allowing floats does nothing to help the endangered salmon. They don't spend time that close to shore. In both Part III and Part IV, local jurisdictions must meet state agency vegetation standards, undermining local control.

The shoreline vegetation conservation section provides too much local flexibility and fails to identify clear standards for the protection of properly functioning conditions. The rule specifically allows minimum standards to be altered. It is not based on best available science but must be. The language that functions may be "provided by other means" seems to allow mitigation with minimal standards for protection.

You say the vegetation standards are based on studies. What do those studies say about 1/2 or 1/4 SPTH? Would they be 70% or 90% effective for salmon recovery? In reviewing the cited literature there is little on the impacts of ag land. We also note most cites are of DOE publications. We recommend an independent literature review and finding be prepared for these regulations. Then we need analysis of other options and their effectiveness in accomplished stated goals. None of the literature about the landscape and biodiversity approach to forest management was cited in the EIS.

There is substantial scientific literature indicating that shoreline vegetation is critical to healthy aquatic environments. The requirements in the guidelines are distilled from that literature. Path A leaves a great deal of flexibility to use scientific and technical information to create appropriate vegetation measures for their local conditions. Path B is more specific in setting minimum standards, but also indicates that a local government may use science to justify variations.

Ecology will provide more detailed information to help local government apply vegetation management standards in an updated Shoreline Management Guidebook.

220(5)

Under the requirements for a 'Shorelines Vegetation Conservation" - tree plantings and other riparian restoration activities will be unnecessarily regulated, if not prohibited due to setback requirements. In many cases, landowners will voluntarily plant and maintain native buffers along shorelines, as long as the buffer width allows reasonable use of their property. The myriad regulations relating to shoreline vegetation buffers may actually cause landowners to decline participation in voluntary programs. This is because once they have planted a shoreline buffer area, they will now be subject to all of the regulations promulgated at the local level to meet the intent of this section. Restoring native vegetation in shoreline areas should be clearly exempted from all SMA regulations.

Ecology believes voluntary efforts can be very helpful in restoring damaged shorelines. However, compliance with the SMA requires that Ecology set minimum standards for new development. Because some might voluntarily protect, it doesn't mean that others should not be regulated.

220(5)

The requirements of –220(5) would impose new regulations within a vegetation management zone, regardless of whether the particular activity requires a shoreline permit or not. In particular, the regulation fails to recognize that RCW 90.58.020 states: "Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the Department." This provision protects alterations to the shoreline prior to the enactment of the Shoreline Management Act and activities occurring prior to the SMA are vested. In this regard, vegetation restoration requirements applied without a substantial development permit mechanism violate the statutory presumption that "altered shorelines shall be recognized." Ecology should consider exempting all activities occurring prior to the enactment of the SMA from regulatory land use review under the SMA when no substantial development permit is required.

The guidelines do not apply retroactively to existing development. They do apply to new development, whether or not that development requires a permit. As a general matter, planting of vegetation would be exempt from SMA permit requirements.

220(5)

If a tree height is a measure of the setbacks presumably linked to stream shading, is there any provision for variation in the setback requirement between north and south streams (trees on the north bank of E/W streams will not shade the stream.).

The use of tree height as a measure for vegetation standards is not linked solely to stream shading. Trees and other shoreline plants contribute other important functions as well, such as contribution of large woody debris, protection from erosion, filtering of sediment, etc.

220(5)

As part of our system maintenance program, PSE routinely conducts an integrated vegetation management program on all our overhead electrical systems which includes an array of alternatives including tree trimming, tree removal, installation of tree wire, and application of chemical products, when appropriate. During emergency operations, e.g. storm outages, vegetation removal is both necessary and critical to the safety of our workers and the restoration of power. All of the actions are conducted primarily for safety of workers and the general public as well as fire prevention, and for the reliability of the electrical system. Currently, vegetation management within regulated shoreline jurisdiction is exempt as an allowable maintenance activity for a legally existing structure. Also, while general shoreline planning is likely to include a focus on "big trees" to foster large woody debris recruitment, big trees need to be kept away from power lines.

Our preference, as circumstances permit, is to replace such trees with lower growing trees and shrubs, so that the need for repeated cutting (and occurrence of tree related outages) is reduced. Recommendation - The following principle needs to be added under part (b) to address this concern: "Routine and emergency vegetation management activities as part of utility corridor maintenance are necessary and appropriate. Local governments should adopt policies and guidelines that allow these vegetation management activities including the provision of adequate and appropriate vegetation replacement actions."

The provisions for conservation of vegetation are intended to preserve the natural character of the shoreline with respect to vegetation. While it may be that the local SMP will require a somewhat different approach to shoreline vegetation management by utility companies, it is not intended that measures necessary to maintain existing facilities or for public safety would be eliminated.

220(5)

The District operates the Priest Rapids Project on the middle Columbia River. An arid, desert climate prevails on Project lands. Within a few feet of the water's edge, riparian vegetation is replaced by desert, shrub-steppe vegetation. In fact, the pre-dam riparian habitat was sand, gravel and rocks for much of the year. In most cases, pre-dam aerial photos indicate the areas have never had "site potential trees" or vegetation corridors of any width. Desert climate conditions impose many restrictions on growth patterns of riparian vegetation. Such conditions include the need for constant application of irrigation water to vegetation growing beyond the reservoir's water table. Obtaining a permanent water right from the DOE would be required to maintain this artificially produced "riparian" vegetation.

Vegetation management reduces the District's ability to install realistic riparian vegetation in conjunction with permitting recreational uses and reservoir erosion control efforts. Obligating the District to adhere to a vegetative management standard that cannot be achieved denies the District the opportunity to operate the Priest Rapids Project in a responsible manner.

The provisions for conservation of vegetation are intended to preserve the natural character of the shoreline with respect to vegetation. It is not intended to require introduction of vegetation where it is not naturally occurring or capable of being self-sustaining. The provisions of subsection (c) address the approach to the issue in arid areas.

220(5)

Clarify that marine aquatic vegetation such as eelgrass must be protected where new waterfront development is permitted.

Ecology believes the provisions concerning critical saltwater habitat adequately address this issue.

220(5)

Proposed prohibition of accumulated fuels and non-fire-resistant venation removal on substantial riparian acreage promotes imprudent risk of catastrophic wildfire destruction of natural and manmade resources and environments via wildfire highways created by treatment prohibitions.

Ecology doesn't believe protection of vegetated buffers on streams will increase the risk of catastrophic wildfires. The rule would not prohibit reasonable management of vegetation for fire protection.

220(5)

Standards for shoreline vegetation removal to maintain transportation services should be included.

Ecology does not believe additional provisions are necessary. Tree pruning is not defined as significant vegetation removal.

220(5)(a) Applicability - Shoreline vegetation conservation

Vegetation standards should provide "retroactively" to existing agricultural practices. Similar to the timber industry, agriculture routinely tills the land, thereby preventing the recovery of shoreline vegetation conservation. While crop rotation is much longer for forest practices, timber practices have been restricted along streamsides, at significant financial impact to the industry. Agriculture should be treated no differently. Agriculture is one of the three largest industries in Washington States, and generates more than $3 billion in revenue. If the intent as expressed in (b) is to protect and restore ecological functions, the exemption of ongoing agricultural practices along shorelines will prevent the Act from accomplishing its goals.

We do not support the shoreline vegetation conservation exemption for forest

practices covered under the state Forest Practices Act.

The Guidelines defer to the Forest and Fish report and the resulting regulations, for regulation of forestry. This report was the result of negotiations of stakeholders in the Timber Fish and Wildlife process. The Forest and Fish regulations include vegetation conservation provisions similar to those in the guidelines that are applicable to other uses. The guidelines also defer to a similar process for agriculture. While the Agriculture, Fish and Wildlife process has not been concluded, the concept is the same.

220(5)(b) Principles - Shoreline vegetation conservation

The guidelines mention that a "Master Program should be directed toward achieving the vegetation characteristics described in the Management Recommendations for Washington's Priority Habitats , prepared by the Washington state department of fish and wildlife." The reference refers to the Riparian Management Guidelines, since no guidelines currently exist for marine shorelines, lakes, or estuaries which would be regulated by the SMA. Ecology and NMFS should further review this document to ensure that it really portrays the ecological functions desired by NMFS and ecology. The document does review and summarize many numerous scientific documents and studies, but does not explain how the results of those studies were translated into the management recommendations that form the foundation of the document.

The concept of RHA's within the document are not similar to the concepts contained within the requirements of GMA or SMA. RHA's themselves are an attempt to establish landscape-level habitat units associated with riparian zones. There are alternative strategies to achieve landscape-level objectives which are not mentioned in the Management Recommendations from WDFW. Implementation of these guidelines may not lead to improved PTE habitat as well as other approaches, and in any event, are not specific to PTE species, but to riparian-dependent fish and wildlife, as well as non-riparian dependent species. Ecology and NMFS should urge local governments to include landscape level ecosystem function in SMP updates, but should not entirely rely on WDFW's Management Recommendations.

Under the "Management Recommendations for Priority Habitats," WDF&W currently recommends riparian planting strips 250 feet in width on shorelines of statewide significance. This standard is inconsistent with the recognition that in the arid climates that prevail in Eastern Washington, riparian zones of 250 feet in width have never existed nor are they achievable. Moreover, in many instances the District does not own enough land nor appropriate water rights to implement WDF&W's vegetation management guidelines. The reference to WDF&W Management Recommendations for Priority Habitats should be eliminated, existing development should be protected and the width and type of vegetation should be consistent with the climate conditions prevailing in the area.

You have got hidden buffers in here. You defer to something called the Washington Priority Habitats put out by Fish and Wildlife. You say you've got to a have buffer that will produce the same result as in a document that we're not attaching, but we will reference. Depending on the type of species, the buffers in the document are way outside of shoreline jurisdiction.

The focus of the rule is on outcomes achieved. The desired outcomes relating to ecological functions are covered in detail, through definitions and standards contained in other sections of the rule. Although as the comment recognizes, there are many alternative strategies available for achieving landscape-level objectives. WDFW Riparian Management Guidelines represent only one of many sources of information to consider.

There is flexibility built into the vegetation standards to establish buffer widths consistent with the climate conditions prevailing in the area.

220(5)(b)

There should be a complete citation for the "Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife". This could be referring to WDFW riparian management recommendations or to those recommendations prepared for certain species. We suggest use of "any available management recommendations..." since WDFW is hoping to prepare Priority Habitat and Species (PHS) recommendations is the fixture that may apply here.

Ecology believes this terminology is sufficient, particularly when one considers the requirement to use "the most current, accurate, and complete scientific and technical information available." See section 200(2)(a).

220(5)(c) Relationship of shoreline vegetation to ecological functions

Path A does not require specific buffers, which will subject local governments to numerous environmental challenges.

Default values (with reference to the source, assumptions, and methodology utilized) should be provided throughout Path A so that jurisdictions will not have to reinvent the wheel when there is already known information. Jurisdictions always have the option of providing justification/documentation if they wish to modify the Ecology's default values. Also, by providing default values in the guidelines, Ecology would be more forthcoming on what specific requirements are being envisioned for each vegetation community (i.e. no woody species, willow, cottonwood, conifers, etc.), instead of using a term like one mature tree height which could range from 20 to 200 feet depending on the species of tree chosen. This approach would also provide jurisdictions some assurance that if a jurisdiction utilized a default value from Ecology, that Ecology would be able to assist the jurisdiction in defending a legal challenge filed by entities that do not feel that Ecology default setbacks are adequate.

For areas where woody vegetation may not be a natural component of the plant communities, Ecology should provide financial and technical assistance in helping to determine what plant species occur in certain riparian areas. If it is not feasible to provide this information it would be appropriate for Ecology to provide a default setback (like 50 feet) unless the jurisdiction wants to provide justification/documentation for another setback. This would allow jurisdictions to decide if it is worthwhile to do additional research on this issue or just accept the default setback.

The reference to "one mature tree height in width, measured perpendicular from the bank full width, from the section for shorelines where trees have been removed" should be deleted from Path A. Jurisdictions using Path A should have the flexibility to determine this width by providing justification/documentation, and not be forced to use the negotiated standard from Path B.

Subsection (5)(c) discusses shoreline vegetation conservation and its relationship to ecological function. The section fails to recognize the relationship between bankfull width, stream gradient, and vegetation. For example, in a forested riverine setting, where the bankfull width is < 5 feet, and the gradient is less than 3%, a 100-foot wide buffer is excessive depending on the species to be protected.

Use of prescriptive "default" values was considered by Ecology and the

various advisory bodies that assisted in preparation of the draft rule. Such an approach was ruled out due to the complexity and wide range of shoreline conditions that exist. In order to ensure in all cases that default values uniformly satisfy SMA policy, such values would likely have to be set so high that many might find them objectionable. A performance approach with reasonable flexibility was found to be more acceptable for a rule that applies statewide. Further, if default standards were used they could quickly become outdated as new scientific and technical information emerges. References to information sources, assumptions and methodologies will be detailed in the update of the Shoreline Management Guidebook.

Ecology is obliged to provide technical assistance to local governments in implementing the SMA and these guidelines. With regard to financial assistance, Ecology has historically and will continue in the future to support requests for adequate funding from the state legislature.

220(5)(c)

This subsection should be re-written because it is incorrect and technically flawed. This section is not based on any credible biological evidence. As stated previously, of particular concern is the provision that "in addressing the restoration of degraded shorelines, local governments should ensure that the required vegetated areas are large enough to be of ecological benefit, even if they are not sufficiently wide to achieve all ecological functions." The problem to this analysis can been seen if humans are given sufficient food, but the not enough oxygen. Aquatic organisms require all ecological functions to be met in order to survive and thrive. Not only is the approach proposed biological wrong, but also it is inconsistent with the ESA, which requires the ecosystems upon which T&E species depend to be protected and restored.

This section must require that all functions be met when determining the width of shoreline vegetation. We have seen the deleterious effects of various State and Federal programs when landowners or local governments can pick and chose which functions will be provided for. Farm plans endorsed by the Natural Resource Conservation Service, and local Conservation Districts have allowed landowners this flexibility, with the end result being minimal or nonexistent riparian zones along streams. One would hope that we would learn from these previous mistakes.

The provision in question addresses restoration of degraded shorelines. The language is intended to recognize that full restoration of ecological functions is probably not feasible in such settings.

220(5)(c)

In this section, shoreline protection is only required to be measured from the bank full width, rather from the limit of the channel migration zones. This is inconsistent with forest practice provisions, and all recent HCP's. The language as proposed will not provide for appropriate long term protection and recovery of salmon stocks and we believe is not sufficient to comply with the requirements of the Endangered Species Act.

This a minimum standard that applies statewide and applies to areas where salmon are not listed, and areas where rivers have no CMZ. In all cases local government must use "all available scientific and technical information." Where there are T&E species present, local governments may indeed reference CMZ (to the extent it is in shoreline jurisdiction) if it is appropriate.

220(5)(c)

Relationship of shoreline vegetation to ecological functions. In paragraph beginning "Woody vegetation normally classified as trees" the Rule should identify, in the absence of trees, what standards would be applied to measure the adequacy of the width of a vegetated buffer.

The performance based standard as indicated in subsection (d) is to implement the Principles section [220(5)(b)], which includes the requirement to use scientific and technical information. More information on measuring the adequacy of the width given certain conditions will be provided in the updated Shoreline Management Guidebook.

220(5)(d) Standards - Shoreline vegetation conservation

Setting standards based on scientific studies and tree height is the right way to protect our streams, lakes, and shorelines. Placing local governments in charge of determining buffer widths and setback distances is wrong. It is vital that we leave this task up to professionals when such valuable resources are at stake.

Shoreline management is a partnership between state and local governments. Some flexibility is required to address local conditions. The standards in this case must be performance based. Local governments are required to use scientific and technical information in preparing buffer widths and setbacks.

220(5)(d)

SMPs shall include provisions to protect vegetation .... however, the local governments should identify ....processes and functions-important to the local aquatic and terrestrial ecology and conserve sufficient vegetation ..This loosely structured "should" language places Ecology and the public in the difficult position of appealing inappropriate individual permits to enforce SMP intent, rather than having Ecology not approve a master program that is deficient at the outset.

The language directs local governments to follow vegetation conservation performance standards. SMP standards may be much more specific so they can be effectively administered.

220(5)(d)

Path B implements a vegetation conservation zone similar to Path A. These areas will"…include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species detrimental to PFC for PTE plant and animal species..." The main difference between the two paths is the physical definition of the conservation areas in Path B. Path A allows local jurisdictions to formulate a setback, while Path B provides specific measurements. If shoreline jurisdiction is restricted to the defined 200-foot designation, there should be little impact to aggregate. However, if the zone includes areas beyond the 200-foot designation (i.e., the one hundred-year flood plain), it may be beneficial to have set standards, as provided in Path B, under which to operate.

The guidelines and SMPs cannot regulate areas outside shoreline jurisdiction as defined in 90.58.030. For rivers, this area is the "floodway" plus 200 feet, or at local governments' discretion, the 100-year flood plain.

220(5)(d)(ii)

The requirements for buffers are very unclear. On page 58 the guideline requires that "minimum vegetation conservation standards that implement the principles in -220(5)(b) and (c) be established." This requirement may be either impossible to meet or entirely prevent shoreline activities particularly in already developed areas.

Often there are city streets, railroad beds and other development along the shorelines leaving little flexibility for new development to implement rigorous vegetation conservation standards.

The guideline requirements are performance based to accommodate the variety of local conditions. Local governments will certainly take into account existing development such as streets and railroad beds when preparing SMPs.

220(6) Water quality, stormwater, and nonpoint pollution

This section should be re-written to require the support of beneficial uses as defined in the State Water Quality Standards regulations. SMPs should include information from the 303(d) list and TMDLs. For those many waterbodies that have not been tested, SMPs should be very protective until rigorous and comprehensive water quality testing is done. Vegetation removal alongside rivers and streams raises water temperatures and increases erosion and sedimentation. Temperature and sedimentation are common criteria on the 303(d) list. Placing buildings inside fragile riparian corridors makes this degradation long lasting, and worsens the temperature effects (Klein, Urbanization and stream quality impairment, Water Resources Bulletin, 1979.) Do not allow removal of significant vegetation in riparian corridors with water temperature problems (Spence et al, ManTech Report, 1996). Exceeding all water quality criteria and restoring ecological functions should be the centerpieces of SMPs.

The water quality standards are kept general to avoid incompatibility and duplication of the other water quality regulations. The documents cited in this comment do stress the importance of water quality.

220(6)

Ground level sanitation should be excluded from the setback requirements. If setbacks prohibit drainfields the state will have many lawsuits. A 200 foot setback is entirely too deep, for example, on lots on Hood Canal.

This section seems to be very brief, given the potential impacts associated with them. At a minimum, there should references to On-Site Septic Regulations.

The proposed Guidelines do not substantially change existing requirements. They do not prohibit the location of drainfields within setback areas. Local governments are directed to ensure consistency between their SMPs and other regulations that apply to the siting of septic drainfields. And local master programs will have to contain provisions for preventing drainfield-related water quality impacts. It is anticipated that most of these provisions will be aimed at properly siting rather than prohibiting drainfields on property located within shoreline jurisdiction.

220(6)

Stormwater runoff from outside SMA jurisdiction must be addressed in this rule.

The jurisdictional area of the SMA is limited by the provisions of the RCW 90.58 and therefore regulation of non-shoreline stormwater runoff is not within the direct authority of the SMA.

220(6)(c)

New developments should be required to retain 65% of the existing vegetation and restrict impervious surfaces to 10% of the surface area.

Vegetation is covered in section 220(5). Impervious surfaces (outside municipalities and UGA's) are covered in section 210(4)(b)(ii)(d).

220(6)(c)

The proposed rule requires local shoreline regulations to ensure that new development does not cause significant impacts to ecological functions or ecosystem processes by altering water quality or flow characteristics. This is an attempt by DOE to gain authority to regulate water quality and flow.

The policy of the SMA requires that the guidelines address water quality. The intent is to assure coordination with other state water quality requirements.

230(2)(a) Principles – shoreline modification

The proposed Guidelines establish the general principle that structural shoreline modifications are not allowed unless the applicant demonstrates they are necessary to support or protect an allowed principal structure or an existing shoreline use that is in danger of loss or substantial damage. This principle, as applied, prohibits new shoreline stabilization measures for an existing principal structure or use unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves [-230(3)(a)(ii)(G)]. It also provides that an existing shoreline stabilization structure may be replaced with a similar structure only when a use or structure needs to be protected from erosion [230(3)(a)(ii)(H)]. The Port is very concerned that these principles and regulations would prevent the construction or replacement of shoreline stabilization measures that are necessary to protect Port operations and keep it competitive.

For example, shoreline stabilization measures may be needed to accommodate changes in the shipping industry, such as maintaining navigability for larger ships, unrelated to shoreline erosion. Moreover, the Port should not have to wait until its operations are in actual danger from shoreline erosion before making necessary upgrades. This will only increase the cost of necessary upgrades or replacements and defeat the point of advance planning. Ecology should change this language so that new stabilization measures are permissible where there is a current or pending need to support or protect those structures and uses allowed under the SMP. Existing shoreline stabilization measures could be replaced when there is a demonstrated need to protect principle uses or structures.

The point of the provisions is to assure that shoreline stabilization is a necessary action and is done in a manner that is as environmentally friendly as possible. Not all navigation and port facilities require shoreline stabilization in order to function. However, as a water dependent use, port and navigation facilities are a preferred shoreline use and as such, where they exist, they are likely to classed as allowed and thereby where necessary, shoreline stabilization is likely to be allowed.

230(2)(a)

It is critical that shoreline enhancement projects be allowed on their own merit without necessarily supporting a permitted use. This will provide an incentive to undertake projects to increase shoreline functions and encourage community participation. This is of particular importance for habitat recovery projects.

Ecology has added a new section, "Shoreline habitat and natural systems enhancement projects" [230(3)(g)] specifically providing for independent shoreline enhancement projects.

230(2)(a)

After "allowed", delete "principal"; after "loss", delete "substantial". If a structured is allowed, it is not necessary for it to be the principal structure. Additionally, the use of the term "principal" and "substantially" is vague and subject to a wide range of interpretations.

Ecology respectfully declines this suggestion. The subject provision is intended to prevent the construction of structural modifications to avoid minor damage or to save accessory structures such as gazebos or storage sheds which might instead be relocated.

230(2)(c)

Subsection (2) discusses the principles that should govern master programs. Principal (c) is to only allow shoreline modifications "that are appropriate" to the specific type of shoreline and environmental conditions. What is "appropriate" can be extremely subjective and vary considerably from person to person.

The principles are further clarified by the actual standards in section 230(3)(a)-(g).

230(2) para. after (g)

Insert a subparagraph (h) by adding "Allow shoreline modifications to protect and promote recreational boating facilities"

Recreational boating facilities are a water-dependent use that is a preferred use under the SMA. However, such uses must seek to minimize and mitigate for impacts to ecological functions when they established. Therefore it is not appropriate to grant a blanket provision allowing shoreline modifications for such facilities but rather to use the provisions of the section to allow shoreline modifications that are necessary based on a thorough review of options.

230(3)(a) Shoreline stabilization

The SMA exempts bulkheads from permit requirements, indicating their importance under the Act, yet the guidelines make every effort to prevent the creation of new bulkheads and reduce the number of bulkheads currently in use. Ecology has placed an unwieldy and extremely expensive burden on property owners. Many small builders, developers, and property owners will be unable to afford the expensive geotechnical reports and biological studies required by the proposed rules. Restrictions on practical shoreline stabilization will require landowners to make the choice between owning land that is either worthless or dangerous, since many will be unable to afford the initial report, let alone the alternative and more costly stabilization measures. Property values will drop without the reasonable expectation to protect property or undergo a major repair or replacement of shoreline stabilization.

These rules prohibit attempts to control erosion of property and structures.

Local jurisdictions will be able to require many studies, reports, etc. that cost numerous dollars with the promise of possible approval. When the final strokes are written, there is no doubt that the words will be "disapproved because of the provisions of the Shoreline Management Act Guidelines." This is called leading someone down a "primrose path" to no end. This same thing happens now in local governments - so why would it not be worse with new guidelines such as those proposed?

The proposed rule prohibits new homes (even on existing legally created lots) in any area that would require shoreline stabilization over the "life " of the development; a homeowner could build a bulkhead to protect an existing home, only if no other alternative is feasible (including moving the house); new bulkheads to protect an existing residential use would not be allowed unless there is conclusive evidence documented by a geo-technical analysis that the structure is in danger from shoreline erosion; docks and bulkheads would be prohibited from intruding into or over critical saltwater habitat (i.e., any area that does or could support aquaculture, or has a "primary association with a priority species"); and local governments are directed to promote community docks over individual property docks. We want DOE to clarify the language inconsistencies and to articulate the Best Available Science which supports these limitations.

Beaches erode and build up as a natural part of geology. The idea that bulkheads erode the beach is pure bogus science (BS).

Bulkheads for SFR's should not be allowed.

In the past, bulkheads have sometimes been treated almost as fences or landscaping features, allowed with little inquiry into the causes of the erosion they are intended to prevent or the particular shoreline dynamics at work at the site. It has been assumed that hard armoring provides the only practical, long-term or safe solution to shoreline erosion. This has resulted in bulkheads that fail to protect property as anticipated and cause unintended impacts to the shoreline environment. Today we know much more about the adverse effects of hard shoreline armoring on the near-shore environment than we did when the SMA was adopted. And we also know that hard armoring is not always the most appropriate way to stabilize shoreline property.

There are many examples in Puget Sound alone where bulkheads have failed because a site's hydrological and geological characteristics were not adequately understood. We have also observed the success, with fewer aesthetic and biological impacts, of appropriately sited softer solutions. Geotechnical reports will provide assurance to property owners that costly bulkheads or other types of hard armoring, if determined to be the most appropriate way to stabilize a site, will be designed and located to maximize erosion control and minimize shoreline impacts.

230(3)(a)

There is an easily perceived inconsistency between the Purpose statements in both Parts III and IV which give priority to "Single family residences and their appurtenant structures" yet this is not at all clear in the sections on shoreline modifications. This should be made more clear, perhaps by linking these two parts more closely together.

Bulkheads are not appurtenant structures or "appurtenances" as that term is defined in WAC 173-27-040(2)(g). They are accordingly not a priority shoreline use.

230(3)(a)

I suggest you and our legislators summon the courage to address the true causes of declining salmon runs, even though that means taking on certain business interests and lobbyists. The docks and bulkheads of residential property owners are only a tiny part of the problem, are highly regulated now and do not need any additional regulation.

Washington State has many examples of bulkheads that have been built with little attention to site-specific conditions influencing erosion or to their environmental impacts. While these structures are certainly not the only cause of the decline in fish populations, there is clear evidence that "hard" stabilization structures can harm near-shore habitat and often do not work as intended to stabilize shorelines. Ecology believes it is time to require the consideration of lesser-impact alternatives.

230(3)(a)

Riprap is the only way to control some banks and keep those banks from sloughing off and changing the river course. Riprap, when done properly, I don't think is near the culprit that it is being made out to be. When we've done riprap and made sure there is some soil interspersed with it and actually washes in on that riprap and throw a couple of willow shoots in there, before too long you've got a vegetative bank. And the problems that are

described in this document as problems with riprap I just don't think are relevant.

Riprap is not the only way to control erosion in a river. A variety of alternative bank stabilization techniques exist. Riprap can adversely affect the ecological functions of the stream by removing shoreline vegetation and altering stream hydrology.

230(3)(a)

Conflicting standards for residential development and bulkheads appear in the geologically hazardous area section and the shoreline modification section. Whereas one section acknowledges the legal right to install bulkheads to protect homes constructed prior to 1992, the other section would prohibit this activity in all but the most serious situations.

The geologically hazardous areas section only applies to those areas designed pursuant to GMA rule (365-190 WAC), whereas the shoreline stabilization section applies to all shorelines.

230(3)(a)

Structural stabilization is discouraged throughout section 173-26-230, yet some sorts of shoreline stabilization can be necessary to restore riparian areas and PFC. This needs to be clarified.

The proposed rule will virtually prohibit implementation of many salmon restoration and enhancement projects due to increased permitting and engineering costs. Projects that involve stream bank stabilization will in most cases require an expensive geo-technical report that may be completely unnecessary and cost-prohibitive Since all riverine areas are geologically unstable by their nature, and most salmon habitat restoration projects take place in riverine areas, these projects appear to also be prohibited without a geo-technical report.

Ecology added a new section, "Shoreline habitat and natural systems enhancement projects" [230(3)(g)] to clarify that salmon restoration and enhancement projects are allowed. If such a project involves shoreline stabilization, the requirement for appropriate studies and justification assure that the measures taken to control erosion are necessary and appropriately designed for both public safety and protection of the environment.

230(3)(a)

The rule could have the negative effect of slowing or preventing remediation of contaminated sites within SMA jurisdiction. The rule could actually allow the escape of contaminates by preventing and delaying maintenance and repair of waterfront retaining structures.

New language has been added to the rule at section 230(3)(a)(ii)(A) to clarify that new shoreline stabilization structures shall be allowed where such structures are for the specific purpose of containing contaminated soils and / or groundwater. Section (A) reads: "New structural stabilization measures shall not be allowed except to protect or support an existing ~~principal~~ or approved use or an existing or approved development or for the restoration of ecological functions or for hazardous substance remediation pursuant to chapter 70.105D RCW. This is to prevent speculative shoreline stabilization."

230(3)(a)

The construction of any new bulkheads should be banned, for the following reasons: a. One of the primary objectives of these shoreline rules is to "protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life" (WAC 173-26-170, p. 12, paragraph 1a) and to support "the state's interest in resource protection and species recovery" (ibid., p. 51). b. Bulkheads (and other "new nonwater-dependent development that includes structural shoreline stabilization") "should not be allowed unless…the structure will not affect priority species" (WAC 173-26-030, p. 61). c. Over one third of the coastline in Puget Sound is already armored. d. "Scientists have found that these structures degrade fish and wildlife habitat and can accelerate erosion on neighboring properties" (Ecology Pub. 00-06-021). e. Building houses too close to eroding shoreline banks is NOT a water dependent use!

The Guidelines discourage new bulkheads and other "hard" stabilizing structures and promote the use of "soft" measures and setbacks. It is not possible to prohibit all new or replacement bulkheads, however. Past development decisions cannot be ignored. Many legally created older lots are too shallow for setbacks alone to adequately protect development from toe erosion. In other cases, beach processes at the site may preclude the use of softer stabilizing measures. Ecology believes that better site evaluation requirements in the Guidelines will significantly increase the use of alternatives to bulkheading.

230(3)(a)

Require geotechnical reports for replacement of ANY bulkhead. It makes no sense that this be required under Path B, but not under Path A. If a bulkhead needs to be replaced, doing so should be justified only through certifiably rigorous geotechnical analysis.

Ecology anticipates that local governments choosing Path A will require geotechnical reports for some bulkhead replacement proposals. However, it may not be necessary to require rigorous site evaluation in other cases, such as where replacement bulkheads are to be located landward of the ordinary high water mark or where existing development clearly mandates the continued presence of a hard stabilizing structure.

230(3)(a)

The text about bulkhead repair and installation is too broad and subject to wide interpretation. We have design standards for buildings, roads, etc., why not for bulkheads & all marine construction?

Bulkhead design and placement is fundamentally constrained by site-specific conditions which vary widely. These guidelines provide flexibility to address differing conditions where bulkheads are determined to be the only viable option.

230(3)(a)

Bulkheads can harm neighboring properties. I support recognition of better means of preserving and stabilizing streambanks. We need to have regulations that are not blanket prohibitions against touching anything.

The overall section focuses on assuring reasonable protection of property while also protecting the environment and neighboring properties. Particularly, subsection 230(3)(a)ii)(D) says: "Do not allow shoreline stabilization for new development that would cause significant ecological impacts to adjacent or down-current properties and shoreline areas."

230(3)(a)(i)

In subsection (3)(a)(i) the proposed rule lists a range of stabilization measures. They are listed from soft measures to hard measures. While it is somewhat unclear, it appears this list is in order of priority and requires each measure to be analyzed and discarded before consideration of the next alternative. What are appropriate alternatives to consider varies significantly from site to site as well as the configuration of a proposed structural measure. If DOE intends to apply the list as a priority checklist, then it is inappropriate and increases costs unnecessarily. Further, the

blanket commentary contained in this section is misleading. It is not always true that the "harder the measure, the greater the impact on wave action, geomorphology, and biological functions." Rather, the impact of a stabilization measure varies based on site specific data and analysis.

The list in the referenced subsection is not presented in order of priority. It is instead an attempt to identify alternative approaches to shoreline stabilization ranging from the very "softest" techniques employing only vegetation, to those that combine vegetation and structural elements to those that are totally structural in nature. We concur that the selection of the appropriate approach requires a careful analysis of site-specific conditions; i.e., a geotechnical evaluation.

230(3)(a)(i)

Add definitions for all of the means of shoreline stabilization, the terms used are not universal and can lead to confusion.

Ecology believes this level of specificity is more appropriately included in the Shoreline Management Guidebook than in the guidelines.

230(3)(a)(i)

The proposed Guidelines define what constitutes "normal repair and maintenance" for shoreline stabilization structures. The problem is that the language fails to clearly state that property owners may conduct normal repair and maintenance without obtaining a new shoreline permit, even though that appears to be the intent of the definition. The Port recommends that Ecology explicitly state that normal repair and maintenance of shoreline stabilization structures are exempt from the need to obtain a shoreline permit.

The provisions concerning whether or not a permit is required for normal maintenance and repair are found in WAC 173-27-040 which is not being changed by these guidelines and will remain in effect.

230(3)(a)(i)

Delete top of p. 61,"Construction that causes significant ecological impacts is not considered normal maintenance and repair." The deleted standard places an impossible burden on the landowner to prove a negative. This will lead to excessive litigation and different standards in different jurisdictions.

Since at least 1987, a comparable provision existed in WAC 173-14-040 and was carried over into WAC 173-27-040 in 1996. There is no record of litigation or other significant problems caused by the provision. Inclusion of such a provision is necessary to assure that activities with substantial adverse impacts to shoreline resources are not authorized.

230(3)(a)(i)

Stabilization is often required for the construction of marinas and other recreational boating facilities. Revise guidelines to clarify that construction of stabilization for these purposes is expressly allowed.

Recreational boating facilities are a water-dependent use that is a preferred use under the SMA. However, such uses must seek to minimize and mitigate for impacts to ecological functions when they established. Therefore it is not appropriate to grant a blanket provision allowing shoreline modifications for such facilities but rather to use the provisions of the section to allow shoreline modifications that are necessary based on a thorough review of options.

230(3)(a)(i)

Normal repair and maintenance of a bulkhead should allow for more than 20% of construction. The amount seems arbitrary and does not reflect the actual types of repairs that are made, usually to more than 20% of the structure. Limiting repair to 20% could mean more environmental impact as parts of the bulkhead fail and enter the near shore waters. Additionally, allowing less than 20% repair at any one time could mean that crews go to the site year after year to do repairs necessary to ensure safe use of the bulkhead and this could have a far greater impact on the environment and PTE species.

This section needs to distinguish between "new"- as in never had protection before, and "existing" - as in already in place. Repairs don't normally fit into neat categories of "20% or less. Ever had to paint just one wall in your house? Or, ever had to replace just one wall of siding on your house? Let us face our maintenance problems with a clear conscience especially when we unexpectedly run into more of a project than we thought we had.

This subsection defines "normal repair" and "normal maintenance" to include the replacement of less than 20% of an existing structure. This criteria could be extreme in some cases. An additional provision should be added to cover reconstruction of existing piers and docks as apart of other reconstruction activities. For example, in repairing an existing bulkhead, a dock or pier in good working order might be temporarily moved. It should be able to be put back in place without difficulty.

The 20% limit on maintenance and repair activities is intended to prevent de facto bulkhead replacements in cases where erosion behind the existing bulkhead may have resulted in the establishment of a new ordinary high water mark, where the existing bulkhead is contributing to shoreline impacts or where a "softer" stabilizing approach may provide a much more appropriate solution. In short, it is intended to avoid perpetuating poorly designed or located bulkheads.

Under both present and proposed Guidelines, repairs such as those mentioned can be incorporated into a shoreline exemption for normal repair and maintenance activities.

230(3)(a)(i)

Shoreline stabilization "normal repair" and "normal maintenance" includes "the patching, ... of existing structures, ... and the replacement of less than twenty percent of the existing structure." Ecology should be aware that this has the unintentional consequence of potentially closing a ferry terminal to the public if more than twenty percent of a bulkhead is lost before normal maintenance and repairs can take place. Provision should be allowed for "normal repair and maintenance" to encompass greater than twenty percent of the existing structure. Does this limitation apply to emergency repairs?

"Normal maintenance and repair" of an existing bulkhead involves minor work on a functioning structure that will remain in its present location; a shoreline exemption is required. Replacement, on the other hand, assumes that an entirely new structure will be substituted for all or part of the existing one. The Guidelines indicate that a replacement bulkhead must be found necessary for erosion protection and appropriately designed, located, sized and constructed to minimize harm to ecological functions. In many cases, replacement will still require only a shoreline exemption; in some cases, a substantial development permit will be required. The 20% limitation on maintenance and repair does not apply to emergency repairs which are subject to the requirements of WAC 173-27-040(2)(d).

230(3)(a)(i)

Revise guidelines to clarify that repair of less than 20% of a bulkhead, wall, revetment, or gabion on a parcel of property constitutes "normal repair" as defined in proposed WAC 173-26-230(2)(i) and is expressly allowed under the new guidelines. After "those actions that are", delete "typically done on a periodic basis." And insert "that

are required to preserve an existing structure." the terminology is vague and subjective to both the land-owner as well as the DOE. The recommended change pertains to structural soundness and provides a clearer standard.

Normal maintenance and repair of less than 20% of a shoreline stabilizing structure is allowed subject to obtaining a shoreline exemption. Ecology does not believe your suggested changes are necessary for clarity.

230(3)(a)(ii)

DOE should carry the burden of proof of why property owners should not be permitted to stabilize and protect their property from erosion. That was the intent of the original initiative passed by the people.

Burden of proof is established by the SMA and has not changed since passage of the act. As a general matter, the applicant has the burden of proof that a project is consistent with the SMA and the local SMP.

230(3)(a)(ii)(A)

Rule requires that new structural stabilization measures shall not be allowed except to protect or support an existing principle use or for the restoration of ecological functions and that new development is required to be located and designed to eliminate the need for future shoreline stabilization. This concept is acceptable for newly created lots and some of the existing lots. However, for those lots that are not yet developed, were created decades ago and are very small, regardless of where placement of the house is permitted, shoreline stabilization may be necessary.

Additionally, if the vacant lot is in the middle of a whole string of small, developed shoreline lots that are already bulkheaded, it may be reasonable to allow the undeveloped lot to construct a bulkhead. If this provision were to result in the taking of property because development requires a bulkhead and therefore a house could not be built, or if a home is built and a bulkhead denied, subsequently resulting in the loss of a home, the State, not the County, should assume responsibility for compensation of a taking, loss or damage of property.

In the circumstances posited by this comment, these guidelines would not necessarily prohibit shoreline stabilization. Under WAC 173-26-230(3)(a)(ii)(C), new non-water dependent development that includes structural shoreline stabilization may be allowed if the need to protect the development from destruction due to erosion is documented through a geotechnical report, non-structural measures such as placing the development further from the shoreline are not feasible or not sufficient and the structure will not affect priority species.

230(3)(a)(ii)(B)

Subsection (3)(a)(ii)(B) provides that new development should be located and designed to eliminate the need for future shoreline stabilization. This direction ignores the fact that hard stabilization measures will have longer service life with lower maintenance. It is difficult to design and construct environment-friendly "soft" solutions that do not require maintenance or replacement.

"Hard" and "soft" stabilizing measures both require maintenance, usually relative to the dynamics of the shoreline environment in which they are located. And as many failed bulkheads demonstrate, the "hardness" or "softness" of a measure is less a factor in the length of its service life than the appropriateness of the measure given the site's specific shoreline conditions. Setbacks provide the lowest-cost alternative to toe protection. By analyzing site characteristics such as hydrological and geological influences and historic erosion rates, setbacks can be established that afford peace of mind to property owners and avoid the need for stabilizing measures throughout the life of the proposed structure

230(3)(a)(ii)(B)

After "shoreline stabilization", insert "if possible". The future need for shoreline stabilization is often times unknown at the time of construction. However, if a need is apparent the additional language will provide for the stabilization where is necessary.

Ecology declines this suggestion. Geotechnical evaluations will eliminate many of the "unknowns" associated with the proper siting of shoreline development and alert property owners to measures needed to prevent or slow erosion.

230(3)(a)(ii)(C)

Please provide best available science that indicates the setback measured from the ordinary high water mark seaward to the edge of the identified near shore habitat whereby upland efforts at protecting habitat no longer have a consequential effect. In other words, eelgrass that is located 10 feet from the ordinary high water mark is much more susceptible to experience an impact from upland activities than that which is 1,000 feet away. Provide a setback standard whereby habitat located beyond that point no longer experiences significant protection through the use of upland development standards.

The requirement of the section is to avoid significant ecological impacts to priority species. This may include short or long term impacts but minimal impacts that are unavoidable are allowed, if the stabilization is necessary. The connection between off shore impacts and on shore actions is variable depending on the action and the resources involved and thereby, individual evaluation is necessary to identify appropriate separation.

230(3)(a)(ii)(C)

New residential development, including the subdivision of land, is prohibited if it will require any form of shoreline stabilization (pp. 61, 122, 141, 142, 152). This will also impact local government financial resources because property owners will be potentially damaged not only for regulatory takings, but also on the basis of vested rights.

Development will be prohibited or severely limited in most rural and coastal areas. And new development requiring bulkheads, bluff walls, or flood walls will not be allowed.

The Guidelines do not prohibit use of property. Instead, they are intended to prevent development that can only exist if accompanied by shoreline stabilization measures. In unstable or erosional situations, the Guidelines may require deeper setbacks for new development and foster creative subdivision design alternatives, such as reserving shoreline areas as community open space and locating all buildable lots in upland portions of the property.

230(3)(a)(ii)(C)

How is a priority species identified and who determines affect of structure on priority species?

Bullet point 3 - Delete "affect priority species." after "will not", and insert "cause a prohibited take of an Endangered Species Act." This is the federal standard. A new and conflicting, state standard should not be created.

The definition of priority species is found in section 020(35).

230(3)(a)(ii)(D)

Delete the entire paragraph. This paragraph is current law and is redundant. Neighboring landowners can bring a legal action that the stabilization harms their

property and therefore constitutes a nuisance under state law.

Ecology removed the word the word "shall" but the revised language is still mandatory. The subsection now reads: "Do not allow shoreline stabilization for new development that would cause significant ecological impacts to adjacent or down-current properties and shoreline areas ~~shall not be allowed~~." Ecology believes that applicants should be required to use stabilization measures that do not cause such impacts. The burden of preventing or mitigating for ecological damage should not be placed on owners of neighboring properties.

230(3)(a)(ii)(E)

Delete "shall" and insert "should". The proposed changes will allow flexibility for special circumstances, for example, would result in total loss or devaluation of the land and require compensation to the landowner.

Ecology revised the language to read: "Do not allow the subdivision of land into parcels, or the creation of new lots, that will require shoreline stabilization for development to occur ~~shall not be allowed~~." This provision does not prohibit subdivision of land. Instead, it calls for the creation of lots that will not require shoreline stabilization, encouraging flexibility and innovation on the part of the developer.

230(3)(a)(ii)(G)

Your prohibition on placement of bulkheads for existing homes is ludicrous and asinine.

It appears that shoreline stabilization, both new and repair, will be allowed only if there is a geotech report to support that a structure is in danger without the stabilization. This does not take into consideration the loss of land that would be lost. Doesn't this amount to a take of property? To deny shoreline stabilization for protection of property could significantly reduce a property owner's land. Has this loss of land and subsequent property value been examined as part of the impacts of the SMA?

The Guidelines do not prohibit all shoreline stabilization measures. Existing bulkheads may be maintained and repaired and may be replaced upon a demonstration of need. Geotechnical analyses (which may also identify non-structural measures for protecting shoreline property) may be required for bulkhead replacement projects and will be required for new bulkhead proposals.

230(3)(a)(ii)(G)

Subsection (3)(a)(ii)(G) should refer to "engineering analysis" rather than "geotechnical analysis". This section does not appear to recognize that shoreline erosion and bluff instability are not always synonymous. In some cases, shoreline stabilization is proposed to prevent erosion from waves and currents and has nothing to do with water drainage. It appears that DOE is aggregating different types of natural processes into a single provision inappropriately.

Geotech engineers are not trained to specify mitigation of impacts on ecological function, this is not within the scope of geotech reports.

After "functions" delete "and ecosystem-wide processes". Individuals trained to prepare geotechnical analysis are not trained to provide ecosystem process analysis. In addition, this standard is overly broad and will lead to confusion and litigation

Ecology understands that there are many factors influencing shoreline erosion and bluff instability. We also recognize the importance of evaluating the complete range of factors at work at a site (hydrological, geological, littoral processes, etc.) in resolving erosion and stability problems. An engineer may not be qualified to prepare geotechnical evaluations. Ecology has amended the rule to read: The ~~geotechnical~~ project design and analysis should also evaluate vegetation enhancement as a means of reducing undesirable erosion~~specify mitigation of significant impacts to ecological functions and ecosystem-wide processes~~.

230(3)(a)(ii)(G)

New bulkheads, including expansion of bulkheads, for existing homes require a geotechnical report showing dire need for property protection (pp. 61, 142). Likewise, an existing bulkhead may only be replaced (repair of over 20% of the bulkhead is considered replacement, (pp. 60, 141) with the same showing of need, although Path A may not require the geotechnical report (pp. 61, 142).

These provisions are intended to avoid the construction of new bulkheads and the expansion or replacement of existing ones as the option of first resort without consideration of alternatives. Geotechnical reports will provide property owners with a better understand of factors affecting the site and will identify optional ways for resolving instability and erosion problems.

230(3)(a)(ii)(G)

Even removal of an existing bulkhead, the apparent goal of the proposed rule, requires a permit (p. 141). Under Path B, if the geotechnical report proves imminent danger to the property, impacts to proposed, threatened, and endangered species must be assessed through an additional habitat evaluation (p. 142).

These provisions are intended to assure that the site environment is fully understood and that adverse impacts of work carried out within the shoreline are minimized. In most situations, removal of an existing bulkhead, considered part of replacement, would require only a shoreline exemption.

230(3)(a)(ii)(G)

This section will inhibit future erosion projects on Douglas PUD lands. As proposed, "Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not a determination of need" for shoreline stabilization measures. The District takes issue with this determination. Stable shorelines are extremely valuable for Project operations and the environment. Generating a "geotechnical analysis" to come to the same conclusion that District lands are eroding wastes needed time and needed shorelands.

Impacts that result from stabilization measures are seldom isolated but instead, can affect properties and resources far beyond the boundaries of the construction site. A better understanding of the rate and causes of erosion may identify alternative stabilization measures with fewer external impacts.

230(3)(a)(ii)(G)

Requires no new stabilization measures unless a need is documented by a geotech analysis. This would appear to apply to all stabilization measures, even "soft" measures such as vegetation enhancement. Was this the intent?

Yes. Geotechnical analysis will provide a better understanding of site dynamics and identify solutions that will enhance shoreline stability at that location while minimizing impacts to the environment.

230(3)(a)(ii)(G)

After "unless there is", delete "conclusive evidence." If a geotechnical report fulfills the evidence requirement additional language is unnecessary and will lead to confusion and litigation.

Ecology respectfully declines this suggestion in favor of the present

language that establishes a higher threshold.

230(3)(a)(ii)(G)

After "erosion itself, without a" delete "scientific". A geotechnical analysis provides adequate support of the demonstration of need.

Ecology does not believe the suggested change is necessary.

230(3)(a)(ii)(G)

It makes no sense to create a "danger" threshold as the trigger to allowing shoreline protection measures.

Ecology agree that the danger threshold should not be the trigger for all shoreline protection measures, even if such a threshold is appropriate for structural measures. The rule now reads: "New or enlarged structural shoreline stabilization measures for an existing principal structure or use, including ~~residential uses~~ residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves."

230(3)(a)(ii)(H)

You talk about shorelines stabilization measures for existing structures whether it needs this or that. And if you follow it through with one thing, you need a conditional-use, and if you want to use riprap, that's not allowed because doesn't support a water dependent use, it's not public access, it's cleanup or disposal of sediments, et cetera. Depending upon how you want to interpret the rules, the bridge may or may not get fixed. You have a geotechnical report that is required. Not every local agency is going to have a geotechnical engineer, a hydraulic engineer, a structural engineer. They can't make a call on a geotechnical report whether the repair is adequate. The rules as written endanger public safety.

The rule as written protects public health and safety as well as natural resource values. The requirement for appropriate studies and justification assure that the measures taken to control erosion are necessary and appropriately designed for both public safety and protection of the environment.

230(3)(a)(ii)(H)

Routine maintenance of private shoreline structures must not be burdened by added restrictions, delays, studies, and drastic definitions such as "repair of over 20% equals replacement". Structures built fair and square should be used, enjoyed, and maintained at the pleasure of the owners without expensive micromanagement by DOE.

Many proposed private development activities will require a geotechnical report, which will not only add to the cost of development but also require additional municipal review of these reports to provide the appropriate level of permit review and its related decision-making process.

Please see above response. Ecology agrees that routine maintenance and repair of existing structures should be encouraged. However, shorelines conditions are dynamic. A structure built years ago to resolve a toe erosion problem may not be needed today or may require substantial design changes or even relocation to effectively control erosion without harming near-shore habitat or neighboring properties. Thus, larger-scale changes to existing structures and replacement may require greater scrutiny.

230(3)(a)(ii)(H)

The RCW is very clear that replacement of existing structures is an exempt activity and while it may true that this is not an exemption from compliance, it is Island County's belief that the purpose of specifically stating that this type of activity is exempt is so that property owners are not overburdened with regulatory requirements. The exemption should allow the County to condition replacement development such that things like construction impacts, timing, structural issues, incorporation of BMPs, etc. are adequately addressed, however, if the structure is existing and it is functional, there should be no question that, subject to specific construction conditions, replacement should be allowed. It is the County's opinion that the demonstration of need is proven by the fact that the existing bulkhead is aging or has been damaged, therefore the replacement of the bulkhead is necessary.

Bulkhead replacement assumes that an entirely new structure will be substituted for all or part of an existing one. The Guidelines indicate that a replacement bulkhead must be found necessary for erosion protection and appropriately designed, located, sized and constructed to minimize harm to ecological functions. Based on site-specific conditions, a different design or location or even a "soft" protection measure may be more effective at addressing erosional problems. It is anticipated that local governments choosing Path A will require geotechnical reports for some bulkhead replacement proposals. However, it may not be necessary to require rigorous site evaluation in other cases, such as where replacement bulkheads are to be located landward of the ordinary high water mark or where existing development clearly mandates the continued presence of a hard stabilizing structure. In most cases, replacement of bulkheads associated with residential development will still require only a shoreline exemption.

230(3)(a)(ii)(H)

The bulkhead regulations will be used to suffocate legitimate repairs and renovations. The SMA exempts bulkheads but these rules will in effect negate this exemption.

Provisions regarding maintenance and repair of existing bulkheads are found in WAC 173-27-040(2)(b). Repair and maintenance activities do not require a geotechnical report under either Path A or Path B. Under Path A, bulkhead replacement may require a geotechnical report; under Path B, a geotechnical report shall be required.

230(3)(a)(ii)(H)

It has been said many different times by DOE that; "These proposals will not affect current or ongoing activities or projects." We find this is not true. If a person has a currently functioning bulkhead and sometime later needs to repair it, that person must get permission to do so. This is certainly wrong since the bulkhead that might have been built in the 1950's has protected a portion of the shoreline for over 50 years. Now you are telling someone that they cannot keep their bulkhead and protection without DOE approval. Further, if this same person has to do more than an allowed amount of repairs (20%), they must have a Geotechnical study and report done - and, if DOE or local government does not think the repair should be done the job will be disapproved. This could put people and property in jeopardy.

Your statement that the guidelines will not affect existing structures is not true: Bulkheads may not be replaced if more than 20% is destroyed.

Eliminate the 20 percent replacement figure as far as being a new structure. That's wrong. My structure is there, if more than 20 percent of it goes, I should be able to replace my structure.

Existing uses are not required to do anything unless and until they propose to change the character of the use or conduct development, as the term is defined in the SMA. Bulkhead repair, maintenance or replacement is development and thereby subject to

regulation by the master program. The guidelines require that bulkheads be regulated by local government to assure that they are necessary, from a geohydrological standpoint, to protect structures and uses that are actually threatened. The guidelines also then require that where necessary, erosion control be conducted in as environmentally friendly a manner as is feasible on the site.

Replacement of more than 20% may be allowed but the relative need and impact of the structure must be considered.

230(3)(a)(ii)(H)

We do live in earthquake country here so in spite of the storms that tend to eliminate your bulkheads, being in an earthquake, that damage would be enough to replace the whole thing and so I think there maybe needs to be some additions to provide for things that just happen and especially if there's proof that the bulkhead has not caused any erosion of the beach and never has. So, replacement of it would not cause any damage.

The purpose of the geotechnical and environmental analysis is to establish a factual basis for judging the relative need and impact of the bulkhead. Erosion of the beach and adjacent areas is not the only issue that must be considered.

230(3)(a)(ii)(H)

If someone had lived in the house before January 1st, 1992, it's okay, but after January 1st, 1999, it's wrong. A new owner doesn't qualify. Why? Is that fair? I don't think so.

After "prior to January 1,1992," delete "and there are overriding safety or environmental concerns". This standard is vague and will lead to litigation.

The January 1, 1992 date is established in the RCW 90.58.100(6) as quoted in 230(3)(a)(i). This provision applies to the decision as to whether a bulkhead may be located waterward or landward of the existing structure. Ecology believes the phrase about overriding safety is a necessary consideration.

230(3)(a)(ii)(H)

Shoreline stabilization that restores ecological functions may be permitted waterward of the ordinary high watermark. That's saying that the county could come out and build a berm in front of my house, fill in normal water with sand and gravel and call it a berm and call it natural ecology and destroy any salmon that may go out from my house.

It is necessary to allow appropriately designed and sited ecological restoration projects where they will be effective. Local processes for review and approval of such projects usually would include notification of adjacent landowners.

230(3)(a)(ii)(J)

Even if the property owner can afford the extreme cost and indefinite wait of the prior studies, he or she still bears the burden of proving the need for a hard bulkhead, and the bulkhead must restore ecological function (p. 62), which may be impossible. Both Path A and Path B require local governments to condition bulkhead projects to assure the restoration of ecological functions, a costly burden on property owners and local governments alike (pp. 59, 62, 138).

The Guidelines require that "…techniques to restore, as much as possible, the ecological functions of the shoreline" be used in designing shoreline stabilization. Ecology believes it makes good sense for property owners interested in preserving the economic value of their land to become good shoreline stewards by helping to restore proper ecological functioning of their shorelines.

230(3)(a)(ii)(I)

Subsection (3)(a)(ii)(I) states clearly that hard structural measures are to be allowed only if it is demonstrated that a softer approach will not suffice. However, there is no indication on what basis this determination is made. In many instances the use of a softer approach can be justified with a shorter service life and with greater risk. It is unclear who will make this type of difficult decision involving different policy and cost considerations.

Just as with bulkheads, softer approaches are not appropriate for all shorelines. Geotechnical reports will be used by property owners and local government officials to determine the most feasible alternatives for the site. As at present, the property owner must necessarily factor in cost considerations when making the final decision.

230(3)(a)(ii)(I)

The last sentence of the paragraph states; "allow hard structural measures only if it is demonstrated that a softer approach will not suffice." Professional Engineers familiar with Douglas PUD Project's site characteristics should be making the determination as to appropriate shoreline stabilization. Obligating softer shoreline stabilization projects over harder applications, within rule form, does not allow the "Shoreline Stabilization Professional" to fully explore all options necessary for shoreline protection. Requiring softer shoreline protection and making Douglas PUD prove soft shoreline protection won't work as well as a hard approach is an unattainable conclusion based on WAC 173-26 guidelines.

Ecology does not agree that the Guidelines preclude exploration of all shoreline protection options for a site. They are indeed intended to promote comprehensive understanding of site conditions and the range of appropriate stabilization options. Since shoreline impacts do not respect property boundaries, a primary intention is to avoid having one property owner's solution become another' owners problem.

230(3)(b) Piers and docks

How is a jurisdiction to determine the "minimum size necessary" for a pier?

Both paths require docks to be the minimum size necessary for the proposed use. This means a property owner can't install a dock to accommodate the 40-foot boat he or she might want to buy someday, if the property owner's current boat is only 25 feet long. Such incrementalism is impractical, and can cause greater disruption to the environment (through repeated construction) than a single initial structure. No showing of need should be required for docks and piers up to a certain size, particularly when pertaining to a single-family residence.

Minimum size necessary is simply a matter of relating the characteristics of the water body at the site to the proposed use and assuring that the dock accommodates the use while not being longer, wider, higher, etc than necessary. Local governments make these determinations on a regular basis. The local SMP will provide more specific guidance as appropriate to the local setting.

230(3)(b)

Without defining "minimum size necessary to meet the needs" and "preferred environmental designs" for piers there will be no consistency in how those terms are understood and applied.. A 40 to 50 ft pier should be allowed.

Ecology believes a one-size-fits-all approach to pier design and construction would not be practical or fair. Piers are built to serve vastly differing needs and

site conditions. This makes it impossible to specify a single preferred size, design, and materials list for every pier. These guidelines provide the flexibility to design and construct piers tailored to their specific needs and site conditions and that minimize their impact.

230(3)(b)

Implementing a subjective and arbitrary standard such as "Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed use" adds new requirements beyond the plain meaning of the exemption. It places decision making bodies in a tenuous position of trying to decide whether the new regulation is legally valid and if so, what would be a minimum size for a dock. Local decision makers like the District are not served by such undefined standards and may be placed in the unacceptable position of being threatened with litigation if a permit is not issued for a dock for a private residence even if a local agency refuses to issue a substantial development permit.

The District is also concerned about the language suggesting that a needs analysis may influence the size, design and construction as it may be applied to docks for private residences. DOE has not defined any baseline criteria for the above passage. No minimum standards are designated by DOE to define "specific need" or how the specific need might influence the size, design or construction of the pier or dock. This regulation should be clarified to incorporate the language of the statutory exemption for private docks, piers and mooring buoys.

Ecology does not agree with several assumptions of this comment. Language restricting piers and docks to the minimum size necessary to meet the needs of the proposed use is not arbitrary but instead is consistent with the Shoreline Management Act's overall goal of preserving and protecting state shorelines because it minimizes the impact of the structure on the shoreline. The standard is not subjective because it requires consideration of an objective factor, the proposed use, to determine dock or pier size.

Ecology does not agree that the standard is inconsistent with the statutory exemption cited. The SMA requires that proposed developments be consistent with its purpose and goals even if they are exempt from permitting requirements. Because the standard in the rule implements these goals, it does not go beyond the plain meaning of the exemption. Ecology respectfully declines to include the language of the exemption in this section as the exemption is already set forth in statute.

230(3)(b)

Around Puget Sound, there are a number of small bays with commercial or public marinas or community dock that reduce navigation. Any further docks will only add to the congestion. I request that you remove the phrase, "excluding docks accessory to single-family residences." This will require the single family resident to justify need. In the situation where there is no nearby marina or community dock such a dock would be justified.

Given that single family residences are not water-dependent and that public access is not normally considered typical with the development of one single family residence, this statement suggests that no docks or piers will be allowed in conjunction with a residence. Is this the intent? If so, Island County feels that this is an unreasonable restriction. Property owners should be allowed the opportunity to present to the County and DOE that a dock or pier has little impact on the shoreline environment or that it can be effectively mitigated.

Expressly include new residential docks for recreational boating as an allowed "water dependant use" under the new guidelines.

Docks associated with a single family residence are a water-dependent use when they are designed for use as boat moorage. Local SMP's are required to regulate docks such that the environmental impacts associated with them are minimized and with consideration of the impact of the docks on navigation and recreational use of the water. This includes consideration of joint use and community docks over individual docks where feasible and appropriate. Local government has broad latitude to consider and address issues such as congestion and navigational safety in crafting dock regulations applicable to their jurisdiction.

230(3)(b)

I condemn the section that speaks to a needs analysis for new docks or pipelines based on the industry's perceived need. Well, so basically, if you build them they will come. There needs to be a public needs analysis.

All shoreline development must be consistent with the local master program and the SMA. This includes consideration of a wide variety of public interest issues including a demonstration that the use is necessary.

230(3)(b)

Entire first paragraph is unclear; what is a "mixed-use development?" It is not defined in the document.

Use of the term water dependent use is unclear.

Mixed use development is a form of urban waterfront development (and more often redevelopment) where a variety of uses are included. Public access to the water is a characteristic aspect of these developments and a mix of water-dependent, water-related, water-enjoyment and non-water oriented uses may be allowed. These terms are defined in the guidelines definition section.

230(3)(b)

Property owners are encouraged to share docks and piers to reduce the spread of individual structures. This will impact the local governments revenue tax bases and permit fees. If adjacent property owners do not agree to share a dock, will there be repercussions to the property owners or the local government? Who decides how many docks and piers are appropriate for the individual stretch of shoreline?

The impact of a few less docks is unlikely to have a significant impact on local revenues. Provisions encouraging shared docks have been in the Guidelines since 1972 and those jurisdictions that have such provisions generally require consideration of the issue at the time the lots are platted so that the fact of a joint or community use dock is known prior to purchase. As part of the SMP development process, local government will conduct an inventory and determine appropriate standards for docks in a given area.

230(3)(b)

Property owners should be REQUIRED (not just "encouraged") "to share piers and docks among several neighbors to reduce the spread of individual structures" (Ecology Publication 00-06-021, p. 2). To merely "encourage" this is to provide essentially no requirement at all. Furthermore, the "requirement that "owners of single-family residences…demonstrate that a nearby dock was unavailable before getting permission to build a new pier or dock" (ibid.), removed from the 1999 draft, should be RESTORED.

When and if sharing of piers and docks is appropriate depends to a significant extent on local circumstances. In any event, whether docks are shared or not, the cumulative impact of SFR docks must be assessed and addressed.

230(3)(b)

230(3)(b)

Please provide evidence to substantiate your claim that all over water structures are harmful. Is it seasonal harm? And how many such structures on a shoreline reach are how harmful?

☒ Docks and other overwater structures damage vegetation through shading and can interfere with fish migration. Each such structure has some impact, however the major impact is cumulative. The number that would be harmful may vary based on the environmental and physical characteristics of the water body and the size of docks allowed.

230(3)(b)

Delete the final sentence. Revise the guidelines to allow the use of traditional and economic materials for pier and dock construction. The requirement for inert materials is cost prohibitive for small individual and community docks that are necessary water-dependant boating facilities.

The statement, "Master program should require that structures be made of inert, nonpolluting materials" is unclear. It could be interpreted as a ban on all products which release some amount of substance into the water. This would include steel, galvanized steel, steel protective coatings, concrete, synthetics and various types of treated wood material. Such an interpretation could cause a project proponent to use less structurally desirable or economic products without regard to whether the prohibited materials represent a risk to the aquatic environment into which they would placed. Treated wood products have been safely used in fresh and marine waters for nearly 100 years - there are no published reports of properly treated products ever creating a significant problem. Regarding treated wood, there is an extensive current set of peer reviewed and published scientific documents which evaluate the impacts of various preservatives and provide the tools for evaluating the risk, if any, of various materials use.

Remove the statement from the document- it is confusing and unnecessary to achieving the goals of the rule. If a statement is to remain it should be clarified as to its full intent. We would suggest, "Master programs should require that structures be made of materials which have been evaluated to assure their use in the project will not allow materials in the water which will likely result in exceeding water quality or sediment standards or otherwise represent a significant adverse impact to the local ecosystem.

☒ Ecology has revised the rule to address this comment. The rule now reads: "Master programs should require that structures be made of ~~inert, nonpolluting~~ materials that have been approved by applicable state agencies."

230(3)(b)

It is disappointing that Ecology will allow the broad exemption for over-water structures related to single family residences in this section, while at the same time restricting so many other types of development. This loophole seems questionable in light of the goals of the Shoreline regulations.

☒ The SMA, rather than the rule, exempts docks associated with single family residences from the requirement to obtain a substantial development permit. The rule simply reflects this statutory provision.

230(3)(b)

The District generally owns the lands surrounding the Project in fee title. Additionally, the Federal Energy Regulatory Commission (FERC) requires the District to regulate the type of uses and occupancy of Project lands. A common request from adjoining private property owners is for permitting new or existing boat docks or mooring buoys on District property. District staff review such requests within the context of the District's Land Use Policy and standard Freeboard Use permit conditions. If such requests are found to be in conformance with the District's Land Use Policy and the Permittee has obtained all other necessary state and federal permits, the District will issue a Freeboard Use Permit to the private property owner. Private docks and mooring buoys are specifically exempt under RCW 90.58.030(3)(e) from the definition of "substantial development".

☒ Certain docks common to specified residential uses are exempt from the substantial development permit requirement but as noted such an exemption does not exempt the project from compliance with the regulations of the local SMP. Mooring buoys are not listed as exempt by the provisions of 90.58.030(3)(e), which only applies to "construction or modification of navigation aids such as channel markers and anchor buoys."

230(3)(c) Fill

Subsection (3)(c) discusses the use of fill and states that fills waterward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit. This provision could prevent the repair of bulkheads that have been undermined by precluding the replacement of lost backfill. It is unclear what the purpose of this provision is if the goal and intent is to protect existing ecological resources. Presumably, this provision should be applied evenly to all types of beach fills.

☒ If the bulkhead is intact sufficiently to establish the ordinary high water mark (OHWM), then backfill would not be considered waterward of the OHWM. If the bulkhead is not intact and the OHWM *is* landward of it then it is appropriate to fully evaluate the impacts on public and statewide resources that the fill may have.

230(3)(c)

The rule allows tons of in-water fill. For an ecologically correct law this does not seem to enhance salmon recovery and would destroy all marine life under the fill.

☒ Ecology does not concur with the assumption that the rule will allow inappropriate fill. Not all fill is harmful to the environment. Clean fill may be used, for example, to cap contaminated sediments that would be more harmful if left uncapped or if excavated.

230(3)(d) Breakwaters, jetties, groins, and weirs

Omitting the following provisions from the existing rule is taking a step backwards. Local governments need these provisions to maintain or improve shoreline habitat and ecological functions. "Master programs must consider sand movement and the effect of proposed jetties or groins on that sand movement. Provisions can be made to compensate for the adverse effects of the structures either by artificially transporting sand to the downdrift side of an inlet with jetties, or by artificially feeding the beaches in case of groins." (WAC 173-16-060 (13)(a)); and "Special attention should be given to the effect these structures will have on wildlife propagation and movement, and to the design of these structures which will not detract from the aesthetic quality of the shoreline." (WAC 173-16-060 (13)(b)).

☒ The provisions of the section require full consideration of ecological functions in placing breakwaters, jetties, groins and weirs. This, together with general provisions that shoreline processes be identified and protected as a part of the shoreline ecological functions and ecosystem wide processes will require local governments where it is applicable to address this issue.

230(3)(d)

It is unclear what is the purpose of prohibiting breakwaters, jetties, groins, and weirs unless "absolutely necessary" in subsection (3)(d), but allowing an exemption for restoration of ecological functions of breakwaters, jetties, groins, and weirs.

In general, breakwaters, jetties, groins and weirs interrupt natural shoreline processes and can disrupt or destroy habitat. As with all shoreline modifications, they are also sometimes necessary and sometimes useful in projects aimed at restoring shoreline ecological functions. The provisions are intended to assure that full consideration of the necessity of the proposed structure is undertaken, as well as consideration of alternatives, before any such project is authorized.

230(3)(e) Beach and dune management

The dunes in Pacific County have been growing out and up for many years. The dunes grow fast enough that both views and ocean side access to homes can be blocked. Dune modifications (i.e., lowering the dunes in order to facilitate access and view corridors) are routinely allowed via an exemption permit under specific conditions that require a vertical survey, an untouched 100-foot protective vegetation strip, maintenance of three feet of vertical. dune above the 100-year flood plain, etc. The proposed rule would require home owners to get a CUP (which requires DOE approval), unless the jurisdiction develops a regional plan for dune management which addresses grading, re-vegetation, and monitoring.

Dune modifications will only be allowed on sites for which the view is completely obstructed and where it can be demonstrated that the dunes did not obstruct the view at the time of the original occupancy of the home. We view this language regarding dune modification as unduly onerous given our local conditions. We want DOE to articulate the Best Available Science that supports these dune regulations.

The proposed rule requires that all jurisdictions experiencing erosion and sediment transport across jurisdictional boundaries (viz., Ilwaco, Long Beach, Pacific County, Westport, Ocean Shores, and Grays Harbor County) adopt a beach management district "or other institutional mechanism" sanctioned by DOE to provide comprehensive mitigation for the adverse impact of erosion control measures. The jurisdictions listed above already are responsible for mitigating environmental impacts due to erosion control measures. The proposed language appears to be an attempt by DOE to circumvent or control the coastal communities' successful erosion control programs. We find this intrusion into our local affairs to be duplicative and unnecessary. One more layer of bureaucracy will not solve the real problems which we face.

The Pacific Ocean beaches and dunes are designated "shorelines of statewide significance" by the SMA. As such it is appropriate that the state have a voice in the alteration of this extremely valuable and rare resource. Recognition and protection of the statewide interests over local interests, preservation of the natural character of the shoreline, long term over short term benefit, protection of the resources and ecology and increasing public access and recreational opportunities are required considerations with regard to all uses of shorelines of statewide significance (RCW 90.58.020). The conditional use allows consideration of these values.

The coastal sediment and transport system is a large scale and complex system. Consideration of appropriate measures and alternatives to address erosion issues can only reasonably occur in a system wide context. The state and federal government have expended considerable funds in recent years studying the sediment transport system along the Pacific Coast. This investment provides a substantial baseline for planning that is not available to other jurisdictions in the state and that would be lost if each jurisdiction makes decisions on their own without coordination with other adjacent jurisdictions.

230(3)(e)

Subsection (3)(e) is non-scientific in that it makes dune modification to protect views entirely dependent on the view at initial occupancy. The criteria for dune modification should be based on science. Dune grading decisions should consider volume and configuration of the dune cross section needed to protect against a storm and the long term trends of dune growth or retreat.

The guidelines recognize that some coastal property owners may be adversely affected by dune accretion. In some circumstances, such as where dune accretion obstructed views that existed at the time of the original occupancy, Ecology believes that fairness dictates allowance of some dune modification. Generally, however, Ecology believes scientific evidence shows that the natural dune line should be retained wherever possible. The dune does provide flood protection, but it should not be considered only for its flood control functions. Dunes are an important natural feature that should be preserved to the maximum extent feasible.

230(3)(f) Dredging and dredge material disposal

In this section there is very little specific identification of measures applicable to levees, dikes, and berets typical of the floodplain in Skagit Co. If this avoidance is consistent with the comment that FEMA and USACE jurisdiction prevail in this area, then adding language is not necessary. However, if the limitations on disposal of dredge material into river channel migration zones are intended to prevent spreading ditch cleaning dredge materials within the floodplain agriculture lands of districts, then it should be reconsidered. This omission of measures for diking and drainage districts suggests that a category created under the SMA for protected floodplain recognizes the shoreline impacts and special regulatory needs of districts which have been engineered, built, and maintained for the protection of identified lands. In this way, they would be joined with other categories of use which require a watershed planning process in order to achieve plans for new flood damage reduction.

The majority of provisions related to management of floodplains are in the section addressing flood hazard reduction (220(3) and critical freshwater habitat 220(2)(iv). It is not accurate that FEMA or USACE jurisdiction prevails in this regard. Compliance with the provision of the local SMP is also required. Coordination of flood hazard reduction planning is provided for in the section on flood hazard reduction. As a general matter, normal maintenance and repair provisions and normal agricultural practices could include ditch cleaning operations associated with diking and drainage district facilities.

230(3)(f)

This section ignores the potential for dredging in channels that are not navigation channels. Additional language should be added to restrict dredging in such channels.

The section provides that all dredging be done "in a manner which avoids or minimizes significant ecological impacts."

230(3)(f)

This citation states that "…Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed…" This will prevent sand harvest mining in the State of Washington, whereas, where common waterways exist, such mining will continue

in Oregon (i.e., the Columbia River). If dredging for the clearing of navigation channels can be allowed, so should sand harvest dredging, with proper study. Environmental impacts are the same.

Dredging often has clear adverse impacts to aquatic resources. When authorized, dredging for navigational purposes serves to facilitate a water dependent use and is in the public interest. Dredging for the sole purpose of obtaining the material is not a water-dependent use and does not serve the same public interest. Therefore under the policy of the SMA it should not be allowed.

230(3)(f)

I am the senior manager of a large industrial complex in Tacoma, situated on the Blair waterway. You're placing new restrictions on dredging. Virtually 100 percent of my raw materials and a large portion of my product goes out over the Blair waterway. We do need dredging constantly to keep our dock clear. And already we have restrictions due to Shoreline Management Act. And I see this as nothing more than further obstructing conducting our business.

Dredging to maintain an existing facility is allowed.

230(3)(f)

Water temperature is directly correlated to velocity so you don't allow dredging. The water gets shallower, the velocity slows down. It warms up. And you say, "Oh, well we're going to shade the thing." Well, if the water runs fast you don't have to worry about quite as much shade.

The impacts of dredging are more complex that the comment suggests. Dredging changes bathymetry which in turn changes flow characteristics which can in turn impact sediment transport, detrital transport, and nutrient cycling. If the effects of a proposed dredging project on ecological functions are indeed positive it is likely it will be approved.

230(3)(f)

In 2nd para, after "improve navigation", add "or to preserve human lives."

Ecology does not believe the suggested language is necessary. Dredging to improve navigation in harbors, shipping channels, marinas, etc. normally does increase navigation safety and thus human safety.

230(3)(f)

Subsection (3)(f) appears to preclude temporary underwater placement by hopper dredge and redredging by suction dredge for uplands placement if not for ecological purposes.

The comment appears to be a correct reading of the provisions.

230(3)(f)

How does one determine the previously dredged depth and width of a channel? This SMA requires that this be met for maintenance dredging.

The authorized configuration of a dredged facility is usually a matter of public record in the permits that granted authorization for the project in the first place.

230(3)(f)

In many smaller streams, the existence of excessive silt, diatomaceous earth, reed canary grass, and other invasive species can seriously degrade stream health and impede salmon passage. Activities to remove such materials are covered under the requirements for "dredging and dredge material disposal." This will unnecessarily include regulation of these types of projects under the SMA, when, as stated above, existing programs currently provide an adequate regulatory system.

Ecology added a new section 173-26-230(3)(g) to clarify that restoration and enhancement projects are allowed.

240(2)(a)(ii) General use provisions - Principles

One of the fundamental policies of the Shoreline Management Act is to balance the use of shorelines while "recognizing and protecting private property rights." RCW 90.58.020. The proposed guidelines state only that local SMPs should "protect property rights while implementing the policies of the Shoreline Management Act." Beyond this, Ecology makes no attempt to define private property rights or provide local governments with any direction on the issue. Ecology has released no analysis of impact to private property, such as whether the rules are consistent with the Attorney General's takings checklist. The SMA clearly requires the balancing of environmental objectives with private property rights, yet the rule does not reflect this balance. Even beyond dismissing private property rights with hollow lip service, the proposed guidelines violate basic constitutional principles by encouraging exactions of public access to shorelines, large fixed buffer areas, and excessive mitigation and restoration requirements.

This section asserts that SMPs are to "protect property rights while implementing the policies of the Shoreline Management Act." The proposed rule includes no provision, however, defining property rights or describing the limits on police power that these rules or local government should observe. SMA requires the balancing of environmental objectives with "recognizing and protecting private property rights." RCW 90.58.020. The proposed rule does not reflect this policy objective.

The definition of property rights requested in this comment is beyond the scope of this rule. Ecology prepared an analysis of the costs and benefits of the rule, including its impacts on property owners, as required by RCW 34.05.328. Ecology believes the rule strikes an appropriate balance between the statutory directive to protect and preserve state shorelines and the need to protect property rights. Ecology does not believe the rule violates any constitutional provisions or requires any taking of private property. The rule does not require local governments to unconstitutionally "exact" private property either for public access, for buffers, or for mitigation. An exaction of private property is a taking only when it is not roughly proportional to the impacts of the development proposal and only when the government requires the land owner to convey to it an interest in the land.

These guidelines do not violate these principles because they do not require local governments to make land owners dedicate their land for public purposes but instead give local governments considerable flexibility in how they achieve the goals stated in the guidelines. The public access provisions, for example, allow local governments to develop plans for integrated public access systems, and in such cases, public access requirements for individual private projects are not necessary. Regarding buffers, Path A does not require the establishment of any particular "buffers;" instead local governments are given several options for achieving vegetation conservation within shoreline jurisdiction. As to mitigation, under the rule, it is limited to the specific adverse impacts of the particular development proposal.

240(2)(a)(ii)

Has DOE reviewed the rules for consistency with the Attorney General's takings checklist and will DOE share the results of that analysis with local governments who may be liable for takings caused by implementation

of SMPs consistent with the newly proposed SMA guidelines? Vesting and reasonable use exceptions must not be compromised by the SMA guidelines.

Article I, Section 16 of the Washington Constitution and the Fifth and Fourteenth Amendments to the U.S. Constitution prohibit the State of Washington or its political subdivisions from taking private property through regulations or otherwise without providing just compensation. The SMA guidelines risk causing regulatory takings in several ways, including encouraging exactions of public access that do not have a nexus with the purpose of regulation under the SMA, Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), and exactions of large and rigid buffer areas and set backs that provide excessive mitigation, well in excess of and not proportionate to the impacts of the regulated action, Dolan v. City of Tigard, 512 U.S. 374 (1994).

A representative from the Attorney General's office has been involved in preparing these proposed guidelines. They have compared the rule against the "takings checklist" and have determined the rule complies with that guidance; that information will be available following formal rule adoption. Ecology does not believe that these guidelines compromise vesting and reasonable use exceptions.

240(2)(b) General use provisions – Conditional uses

The rule states that "…If a master program permits the following types of uses and developments [mining], it should require a conditional permit…" Such a standard would require a conditional use for a permitted shoreline use. It is unclear as to why if a use were permitted in a designation, it would need to complete the research and process (which include cumulative impacts, which was addressed previously) for the conditional use. If a use is permitted, it should be allowed. If it is conditional use of a designation (rural conservancy), then it should complete a conditional use permit process. This runs the risk of a double jeopardy, requiring an applicant to complete a shoreline and/or comprehensive plan amendment to redo the process and expense for a conditional permit on a permitted use.

The purpose of this section is to give direction to local government in the planning process. With each environment designation, local government must establish permitted, conditional and prohibited uses. Conditional uses are, as this section indicates, those uses that should not be permitted outright but may be allowable in a given circumstance based on specific design, location and public interest considerations. Once a master program is adopted, the specific classification of uses or activities is established and an applicant would be able to determine the process necessary to obtain approval of that use.

240(2)(b)

The rule says if single-family residential is causing cumulative impacts — which means tiny little impacts you can't measure on your own but they add up to something when you look at them all — that one of the appropriate mechanisms is to go through a conditional-use permit process. Well, that's very interesting, because right now you go to the county and you get an exemption, and DOE has no ability to challenge that evaluation that meets our requirements. A conditional-use permit requires DOE approval. I don't want for folks to ask DOE whether their homes are appropriate, cause significant impacts to environmental functions, cause significant vegetation removal, or cumulative impact when we go into writing these rules.

The proposed rule indicates that conditional uses are to be used to address cumulative impacts (p. 65). At present, DOE does not review local exemption permits issued for single-family residences. If it can be construed that single-family residential uses cause cumulative impacts, DOE could mandate that such development requires a conditional use permit. Each conditional use permit would require specific DOE approval. How does this restriction comport with the statutory language in Chapter 90.58 RCW that gives SFR preferred-use and exempt status?

The subject provision states that "a conditional use permit *may* be used for a variety of purposes…" Assessing cumulative impacts is given as an example of one possible use of this type of permit. The list of uses and development that require CUPs in 240(2)(b)(i) – (iv) does not include single family residences.

240(2)(b)

This section should add language that requires any new outfall to obtain a conditional use permit.

The rule does not preclude a local government from requires any new outfall to obtain a conditional use permit. However, this may not be appropriate in the context of the provision of the SMP that address water quality or water quantity.

240(2)(b)

CUP's used to be approved by local government but will now be required to obtain Ecology's approval. This is removing local control.

The Shoreline Management Act (RCW 90.58.140(10)) has always required CUP's and VAR's be sent to Ecology for approval or disapproval. This rule does not change that statutory requirement.

240(2)(b)(ii)

The draft guidelines provide that local master programs ". . . should require a conditional use permit . . . [for] Class IV-General forest practices where shorelines are being converted or are expected to be converted to nonforest uses. Although the word "should" allows some local government flexibility, "`Should' means that the particular action is required unless there is a demonstrated, compelling reason, based on the policy of the SMA and this chapter, against taking the action." Therefore, if a proposed master program does not require conditional use permits for Class IV-General forest practices, DOE may refuse to approve it or, if DOE does approve it, that approval could be challenged by third parties. And, both at the DOE review stage and in any subsequent challenge to DOE's decision, local government may have to justify not requiring conditional use permits for Class IV-General forest practices. We urge DOE not to require or recommend conditional use permits for Class IV-General forest practices except where the shorelines are being converted to a use that itself requires a conditional use permit. In other words, whether a conditional use permit is required should depend on the new use to which the lands are being converted, not the prior use. Landowners should not be penalized for keeping shorelines in a forested condition up to the time they are converted to some other use. On the contrary, the more landowners can be encouraged to invest in growing trees for future harvest the less economic pressure there will be for premature conversion of forestlands to non-forest uses.

Class IV forest practices are among a list of actions that MAY have a significant ecological impact on shoreline ecological functions which then may be managed by the requirement to obtain a CUP rather than by pre-defined regulations. This is clearly not a requirement but rather something that local government should consider as an option.

240(3)(a) Agriculture

All existing agricultural activities will escape regulation under these new guidelines. While all agriculture along applicable shorelines must be inventoried and included as part of the cumulative impact analysis required of local jurisdictions as described under 173-26-300(3)(d)(iii), these local entities will have no non-voluntary means to improve shoreline ecological condition in existing agricultural areas. Instead, local regulators will be limited to improving "development" best management practices with the hope that, in so doing, watershed-wide conditions will improve. This approach is inconsistent with the goals of the SMA and the authority of ESA.

Through administrative interpretation Ecology has determined that, while single family residences are exempt from substantial development permits under RCW 90.58.030 (e)(vi), they are still subject to the use requirements of RCW 90.58.340. This interpretation supports Ecology's determination that uses connected with single family residences must still be consistent with SMA policies and therefore, local jurisdictions must use their other land regulation authorities to condition these uses for consistency with the SMA. The exemption of agricultural practices from substantial development permits is found in the same subsection of the RCW as the single family residence exemption (RCW 90.58.030(e)(iv)). Ecology has recognized that for new agricultural uses, the same statutory interpretation applies and new agricultural uses must be consistent with SMA policies. Ecology has not explained why existing agricultural practices should be treated differently.

Ongoing and existing uses, that is, uses that are established and not proposing to change their use or conduct development activities, are typically considered to be "grandfathered" in. This means that they are either legal non-conforming uses or legal conforming uses and, unless they propose to change the use or conduct development, are not the subject of the regulations. Any proposal to change the use or conduct development would be subject to compliance with the local SMP. The intent of the provisions regarding agriculture is to assure that agriculture is treated in a manner that is essentially similar to the way other established uses are treated while recognizing the unique characteristics of agricultural use.

The requirement for SFRs and other exempt development to be consistent with the SMP is based on the provisions of 90.58.100(1) and 90.58.140(1). It is not based in any way on the provisions of 90.58.340. The provisions of Section 340 requires that in planning for non-shoreline lands adjacent to the shorelines is consistent with the policy of the SMA, these guidelines and the local SMA.

240(3)(a)

Explain your rationale for exempting agricultural activities. The exemption for ongoing and existing ag place these regulations in direct opposition to the GMA's requirement under 36.70A.140 to identify and preserve critical areas. Under the GMA no exemptions are allowed in these critical areas. The proposed exemptions will ensure the problem of poor water quality from non-point source pollution will continue.

The DEIS incorporates by reference Knutson & Naef (1997) which attributes existing agricultural practices to the loss of PTE species, their habitat, and the ecological functions of these habitats. Exempting existing ag activities violates the intent of the SMA and ESA.

For restriction on forest practices, the proposed rules appropriately defer to the forest and fish report, jointly developed by industry, the federal government, tribes and others. The agricultural community is currently working with environmental groups, local, state, and federal agencies, and tribes to produce similar results. Although eventually the Agricultural/Fish/Water process might no be successful, DOE should allow that process to work before proposing changes in the regulation of agricultural uses.

Who determined/defines "existing and on-going" agriculture, and which ones will federal agencies allow under Path B?

The broad exemptions granted to existing ag activities are contrary to the objectives of the guidelines, and the purposes of the SMA. There may be some argument over grandfather rights often identified with existing use and development, but much of that development is also a major culprit in the ongoing degradation of shorelines-salmon habitat in particular. As important as it is to maintain a vibrant farming economy, it is no secret that farming practices have had tremendous adverse effects on the loss of salmon habitat through contaminated runoff, erosion, deforestation, damage to riparian areas and other problems. Some attempt should be made through the SMA to institute meaningful buffers, restore functioning ecosystems, improve water quality, discontinue poor practices, and encourage more sustainable use of the shoreline environment. Ecology should explore ways to address these concerns through the development of specific guidelines that supplement the draft guidelines under review now.

The ongoing exemption for agriculture will assure that salmon stocks throughout Puget Sound, and specifically within the Skagit River basin will not recover. This maintenance of the status quo shows a cavalier disregard for the efforts and regulations necessary to recovery salmon stocks in Washington, and a lack of real commitment to address the essential elements necessary to preserve and restore shorelines of the State. It is inconceivable to us that given the reams of data and numerous years of experience showing that voluntary approaches do not work, that ongoing agricultural is exempted from this ordinance. Studies have demonstrated the devastating impacts of unregulated agricultural activities on water quality and fish habitat.

The Western Washington Growth Management Board has recognized this and has so stated. We cannot recover salmon stocks if the status quo is maintained regarding agricultural practices in close proximity to streams. Studies on the Skagit River, have shown that nearly 70% of the loss of coho salmon can be attributed to modification of stream banks usually associated to farming practices. The vast majority of water quality impaired water bodies are the result of unregulated agricultural practices. Despite clear and overwhelming evidence of the significant impacts of agriculture, WDOE has chosen to exempt this particular land use practice. We believe this is wrong, and should be changed.

Agriculture is not exempt from the regulation nor is it the subject of any change in the regulatory system as it has applied under the SMA since its initial adoption. The SMA applies to agriculture in the same way it applies to all uses. While all uses are subject to regulation through the local master program, in most cases, existing and ongoing uses are the subject of a local program only to the extent that such use is proposed to be changed or to conduct development. For example; an existing home, office building, or marina, ongoing use of the property, in essentially the same manner as it has been used, is allowed without any further authorization through the local government. The structure and grounds can be maintained and tenants may come and go, as long as the use is not changed nor the structure and grounds significantly modified. If a change is proposed, the local government reviews the proposal for consistency with the local SMP.

The SMP defines use categories that may be general or very specific. These

regulations together with provisions on lot size, setbacks, etc., then define the latitude that each property owner has beyond the existing and ongoing use. Some changes are allowed outright, others require discretionary review through a permit process and others may be prohibited altogether. Unlike uses conducted in a building or facility, agricultural activities are conducted on the land. While there are other such uses, agriculture is unique in many ways and thereby require special provisions to describe what existing and ongoing use means. However, the intent of these provisions is to assure similar treatment to other uses not special treatment. Management of the agricultural practices that are part of existing and ongoing agriculture is the subject of the Agriculture Fish and Wildlife negotiation currently being conducted by the state.

240(3)(a)

It appears that the amended SMP guidelines concerning agriculture have been watered down. Omitting the key provisions below is unacceptable: "Local governments should encourage the maintenance of a buffer of permanent vegetation between tilled areas and associated water bodies which will retard surface runoff and reduce siltation." (WAC 173-16-060 (1)(a)); "Master programs should establish criteria for the location of confined animal feeding operations, retention and storage ponds for feed lot wastes, and stock piles of manure solids in shorelines of the state so that water areas wilt not be polluted.

Control guidelines prepared by the U.S. Environmental Protect-ion Agency should be followed." (WAC I73-16-OGO (1)(b)); "Local governments should encourage the use of erosion control measures, such as crop rotation, mulching, strip cropping and contour cultivation in conformance with guidelines and standards established by the Soil Conservation Service, U.S. Department of Agriculture." (WAC 173-16-06() (1)(c)).

While perhaps less specific on appropriate measures within the agricultural section, other sections of the SMP applicable to new agricultural development will assure that such uses protect ecological functions and other shoreline values.

240(3)(a)

The rule says, "standards shall apply to new [ag] development," but immediately following that it says that the standards should not apply retroactively to agriculture. The difference between "shall" and "should" may seem to be semantic, but your director has said that this will not and does not apply to existing, ongoing agriculture. There is a difference between should not and shall not. You use imperative voice on Page 56, section A, paragraph 2, line 3, under the conservation standards for vegetation, you state, "Vegetation conservation standards do not apply retroactively to existing agriculture." You should change the word "should" to "shall" for agriculture standards do not apply retroactively to agriculture. It was a commitment and a pledge that your director gave. We trust you will do that. (This applies to 240-3a and 340-3-a.)

"New agricultural development" is not clearly defined. Furthermore, the guidelines state they "should" not apply to current agriculture; however, in other places the guidelines state they "shall" put higher emphasis on the restoration of ecological functions and protection of endangered species.

Ecology agrees that "should" is the incorrect word in this sentence. Ecology has revised the statement to declare: "New shoreline master program provisions do not apply retroactively to existing agricultural uses."

240(3)(a)

5th para: The sentence: "if the shoreline habitat has been degraded through development for agricultural practices, the master program shall include provisions that result in improved habitat over time." It is not say specific to retro, existing, ongoing if shorelines habitat has been degraded through ag practices, it shall be covered by provisions. That sounds like it applies to existing agriculture. The reasoning behind this was to leave a small hole to allow for AFW, is my understanding. AFW process is driven through NRCS not shorelands. So I find the logic there a little bit flawed. Include this regulation in there and you really do have a trust issue on this.

The proposed rule requires that local shoreline regulations include provisions that result in improved habitat over time, if the shoreline habitat has been degraded through agricultural practices. It is not specified (and would presumably be left to DOE and local governments to negotiate) exactly how shoreline habitat on agricultural lands will be "improved" over time.

What's interesting in ag is though somehow we have to go out and determine the shoreline habitat has been degraded by agriculture. The DEIS says that ag is the number one impact, so I assume that it has. And it says we have got to improve habitat over time. So again, that means that there is a rule for the county and state to go out to farms and say, "Boy, you have impacted the habitat over time. Now we've got to restore that." Well, restoration gets at limiting existing and ongoing ag, does it not, if we've got to restore. I don't see how we can get out of that catch 22.

The requirement to improve habitat over time is a general planning requirement and is intended to guide overall actions taken in implementing the local master program. Ongoing and existing uses, that is, uses that are established and not proposing to change their use or conduct development activities, including existing and ongoing agriculture, are considered to be "grandfathered." This means that they are either legal non-conforming uses or legal conforming uses and, unless they propose to change the use or conduct development, are not the subject of the regulations.

The state is engaged with other stakeholders in an effort called the Agriculture, Fish and Water process that is developing guidelines for agricultural practices that will address environmental concerns of existing and ongoing agriculture.

Concerning the statement that local shoreline regulations include provisions that result in improved habitat over time, Ecology expects improvement over time to result from regulation of new agriculture and non-regulatory programs.

240(3)(a)

The first sentence refers to the definition of existing and ongoing agriculture. That definition needs to be provided.

The proposed rules use the GMA definition of "agricultural land" to define existing and ongoing agriculture. Using the GMA definition is inappropriate, as the intent of the GMA definition is to IDENTIFY agricultural lands for classification purposes. The Department has broadened the scope of the SMA related to agricultural activities to the point of the proposed rules being inconsistent with RCW 90.58. Specifically, 90.58.030(3)(e)(iv) in no way limits the definition of agricultural activities and states, in part, "Construction and practices normal or necessary for farming, irrigation, and ranching activities...." Smaller jurisdictions will be mandated with the impossible (and arguably illegal) task of regulating landowners who change their land use from one crop to another.

Ecology has amended 173-26-240(3)(a) and 173-26-340(2)(a) to clarify that crop rotation is not a change in use.

Section 240(3) now reads: "Existing and ongoing agriculture includes, but is not limited to, the production of

horticultural, viticultural, floricultural, livestock, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, or Christmas trees; the operation and maintenance of farm and stock ponds, drainage ditches, or irrigation systems; normal crop rotation and crop change; and the normal maintenance and repair of existing structures, facilities, and lands currently under production or cultivation."

240(3)(a)

"New" agriculture is not defined so how will locals know when to apply these regulations?

An example of "new" agriculture is where land currently in a non-agricultural use is converted to agricultural use. Changing from grazing to row crops, to fallow, etc. is changing one agricultural practice another agricultural practice. But the use remains agriculture.

240(3)(a)

For the first time, the guidelines direct local governments to regulate new agricultural development.

The Shoreline Management Act and the existing guidelines, WAC 173-16, have regulated agricultural development since 1971and 1972 respectively. Many activities and uses are exempt from the requirement to obtain a substantial development permit. However, exemption from a permit requirement is not equivalent to exemption from regulation.

240(3)(a)

Guidelines could require or actively promote changes in set-backs, vegetation protection and restoration objectives consistent with the regulations where the status of land parcels change, other parcels along the shore are not in agriculture, land ownership changes, or where other factors may apply. For instance, where state or federal set-aside programs occur, those should be induced to provide programs that promote or provide incentives to agricultural users and landowners to implement shoreline function objectives, while still allowing agricultural use on the remaining parcel consistent with these regulations.

The last paragraph in the agriculture section clarifies that lands enrolled in set-aside programs are considered to remain existing, ongoing agriculture. The provision was added to make sure that vegetation protection measures were not a disincentive to enroll in voluntary set-aside programs.

240(3)(a)

Can tide gates on diked tideland pastures be repaired and replaced? Can drainage ditches on those lands be repaired, cleaned out, and replaced with new ones?

Tide gates on diked tidelands can be maintained and repaired in accordance with the provisions for normal maintenance and repair contained in the SMP and WAC 173-27-040(b).

240(3)(a)

The rule gives some latitude to aquaculture as an emerging industry. The rules say we are allowed to give them some latitude. Well, that's a very good idea. However, they are only one type of agriculture. What I would ask that do you is take the GMA approach. GMA identifies an agricultural site and tries to maintain it as such. You should recognize existing agriculture sites as existing and ongoing ag, and allow those to continue without further county and state interference, and should give the same latitude that you have given to aquaculture for the land-based. If you're giving latitude for those that farm in the water, why don't you give it to those near the water? Aren't we protecting the water and the shoreline environment itself? That seems to make sense to me. Let's give the same latitude to those folks in crafting those rules. What's fair for one is fair for all.

Local SMPs are directed to provide latitude in regulating the impact of the aquaculture industry on the environment due to the experimental nature of the industry. This same level of latitude has not been extended to the other shoreline agricultural industries such as cranberry, dairy and beef that are undergoing the same or greater degree of change, experimentation and adaptation.

Aquaculture is a water dependent use and the SMA specifically mandates preference for water-dependent uses. However, the guidelines recognize that agriculture is a reasonable and appropriate use in some settings consistent with the GMA. For example, the "rural conservancy" environment gives as examples of uses that are appropriate in that environment "…timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity residential development consistent with the local comprehensive plan's rural element and chapter 36.70A RCW, and other related low-intensity uses."

240(3)(b) Aquaculture

The SMA contains no reference to aquaculture yet 173-16-060(2) (which is copied into the new guidelines) declared a preference for it and called it a water dependent use. That is a DNR term borrowed from RCW 79.90 and is applicable only to DNR determinations of priority regarding competing applications for lease of aquatic lands. It was not intended for use in an SMA context but now is added to this rule as definition at 173-020(54). But its RCW 79.90.465(1) says it is any "use which cannot logically exist in any location but on the water...". Your definition greatly expands this to "...adjacent to the water..." and is way beyond the scope and intent of the SMA. Delete the preferences for aquaculture from the SMA and its rules.

I encourage very strict rules for aquaculture.

Shellfish are also a treaty-protected activity. This section should be modified accordingly

The policy of the SMA (RCW 90.58.020) states that "industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state" are a priority use. Aquaculture is a water-dependent use, and therefore a preferred shoreline use.

240(3)(b)

The language about aquaculture being in its formative stages and experimental is hard to believe. That language is 30 years old and copied from WAC 173-16-060 and aquaculture has emerged. The language almost appears to be an advertisement on behalf of aquaculture. Aquaculture is responsible for introduction of non-native species into Puget Sound without any EIS. Adverse consequences to native species are the result.

Ecology has modified the statement to read, "The technology associated with some forms of present-day aquaculture is still in its formulative stages and experimental." This is especially true of scallop, abalone and seaweed culture. The Washington State Department of Fish & Wildlife control the introduction of non-native species for commercial purposes.

Ecology has amended the standard to clarify that local governments must adequately consider the long-term impacts of siting aquacultural facilities. The rule now reads: "Aquaculture should not be permitted in areas where it would significantly degrade ecological functions over the long term, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses.

Aquacultural facilities should be ~~developed~~ designed and located so as not to spread disease to native aquatic life, establish non-native species, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020."

240(3)(b)

We generally support the Aquaculture section but as discussed above would like to see the term "significantly" clearly defined.

Where terms are not defined specifically, the dictionary definition applies. In this case, the term "significantly" might also consider the context of SEPA review (WAC 197-11-794) which states that significant means "a reasonable likelihood of more than a moderate adverse impact on environmental quality."

240(3)(c) Boating Facilities

Where is the science supporting your effort to eliminate live-aboards and covered moorage's? Shorelines guidelines should not attempt to regulate live-a-boards. This provision should be removed to allow people to continue to enjoy the historic lifestyle of living on the water in their boats.

These guidelines do not ban live-aboards or covered moorages, but do promote limiting the impacts of those uses. This is based on the desire to reduce pollutants discharged by live-aboards and the adverse impacts from covered moorages such as shading habitat, blocking views, and aesthetic considerations.

240(3)(c)

My primary business is boat hoists. They are portable docks. They are free-standing structures that people assemble. They have wheels on them. In the midwest or most places other than the immediate Seattle area they are pulled in and out of the water. We had a customer in Hunts Point who went to get a permit to put one of these in. And Washington State Department of Ecology said that if it costs more than $2500, therefore, it can't be permitted and it has to come back out. And you need a substantial development permit to put in a boat lift. Now, I don't know exactly what we designed when we patented them. Boat lifts. There's not a lot of difference between a trailer and a boat lift.

When we back a trailer in the water, do we need a substantial development permit for that? Do we really want a public hearing to back a trailer in the water? And what is the different between a trailer and a boat lift? If we're affected 200 feet up to shore when we paint our houses do we need a substantial development permit for that? If we reroof our house or change our windows and it's over $2500 do we need a substantial development permit? Everything I am reading says yeah. Doesn't make any sense. I don't think it's your intention.

The SMA requires that all "development" as defined in RCW 90.58.030(3)(d) be conducted in a manner consistent with the policy of the SMA and the local master program. Provisions regarding when a development does not need to obtain a permit are contained in RCW 90.58.030(3)(e) and WAC 173-27-040.

240(3)(c)

These regulations will thwart all forms of maritime related industries, businesses, and access to the maritime park system.

The guidelines implement the Shoreline Management Act policy to give preference for water-dependent businesses and industry.

240(3)(c)

Subsection (3)(c) defines "boating facilities" as excluding docks serving four or fewer single-family residences. There is no explanation given for the relationship between the number of residences with boating facilities relative to the potential impacts. Again, this provision does not appear to be grounded in good science.

The purpose of the exclusion is to differentiate between small facilities for residential use and marinas.

240(3)(c)

Remove provisions from the guidelines that impose health, safety, and welfare requirements on boating facilities, since existing regulations already apply.

Ecology believes the provisions of the boating facilities section are the minimum necessary to assure consistency with the policy of the SMA. Concerning existing regulations, section 240(3)(c)states that "Where applicable, shoreline master programs should, at a minimum, contain…(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. **Master programs may reference other regulations to accomplish this requirement**."

240(3)(c)

Eliminate provisions regulating visual impacts. These provisions are often designed to prevent the economical construction of boating facilities and run counter to the SMA goal of promoting water dependant uses.

Covered moorage restrictions should be removed. These added restrictions run counter to the SMA goal of promoting water-dependant uses.

The SMA specifically mentions aesthetic qualities in 90.58.020, which states that "the public's opportunity to enjoy the physical *and aesthetic* qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally." Section 220(4)(d)(iv) provides further direction on how to consider aesthetic impacts in preparing master programs.

240(3)(c)

I would beseech you to assure that conservancy management considerations are continued and more importantly I think we have now perhaps the only realistic opportunity to reinstitute that original prohibition on live-aboards in those areas of the lake where there are riparian habitat considerations and spawning by migratory salmon.

The rule establishes reasonable regulations to assure that boating facilities minimize impacts and address habitat protection on a statewide basis. This comment references a local regulatory issue. Specific uses concerning specific lakes will be addressed by local governments in updating their SMPs.

240(3)(c)(iv)

Public access requirements should be removed from this section. Previous provisions already provide for public access at publicly operated facilities. Private facilities are unable to offer direct public access due to safety and liability risks.

Public access is a great goal in public spaces. However, most facilities have gates so their customers are secure. Public access is maintained in a place that doesn't compromise that security. There is not an automatic need for the general public to be able to wander private property just because it's on the water. For private marinas, there is not always a place to achieve any compromise and insurance and liability issues are overwhelming. We thought the idea was to foster water dependent uses - trust us to do just that.

Section 240(3)(c)states that "Where applicable, shoreline master programs

should, at a minimum, contain…(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-220(4)." The public access provisions of section 220(4)(d)(iii) provides for exceptions to this provision including an exception for "where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment…"

240(3)(c)(iv)

A lot of these rules are already regulations somewhere else. Stop overlapping! If it's a dock on the water it's for a water dependent use - boats!! Whether that dock is for a water-dependent, related or oriented use should not matter. Stop shooting yourselves in the foot and let owners decide how to make their businesses attractive. We should not have to "mitigate visual impacts". Either you want water dependent uses or you don't. In our marinas we want the option of changing the configuration every thirty years or so to meet new demands - wider, higher boats, more sailboats, more powerboats, changes in use or better use of space. That requires driving a NEW piling here and there and putting in NEW docks. Water-dependent uses are very important to most all of the agencies we're regulated by. Let us do our jobs so that the water-dependent uses can actually stay in business. That means WE decide size of any structures, what materials to use and how much of them needs to be repaired or replaced.

Some of the views expressed in this comment are inconsistent with the policies and provisions of the SMA as it has existed since 1971. These guidelines cannot be drafted in a manner that is inconsistent with the SMA. The guidelines do not preclude expansion or reedevelopment of existing water-dependent uses. However, they do require that SMPs "contain provisions to address potential impacts while providing the boating public recreational opportunities on waters of the state."

240(3)(d) Commercial

The proposed rule directs local governments to give preference to water-dependent commercial uses over non-water dependent uses. Non-water oriented commercial uses (i.e., any use that doesn't have to be located on the water's edge to do business) are virtually prohibited in areas that are subject to shoreline jurisdiction. Stores, services and other commercial uses will not be allowed. Unfortunately, much of coastal Washington's available commercial property exists on old industrial and commercial land along the waterfront. If non-water dependent commercial uses are prohibited along the shoreline, then there will be little future commercial development in the City of Raymond or the City of South Bend. If this rule existed in the recent past, McDonalds, Everybody's, the Vet Clinic, and the Riverview Clinic could not have been built in Raymond, and the DSHS office building would not have been built in South Bend.

The SMA clearly gives preference to water-dependent commercial uses over non-water dependent uses. The guidelines allow nonwater-oriented commercial uses on shorelines if they provide public access and ecological restoration and they meet at least one of the following criteria:

(i) The use is part of a mixed-use project or area that includes water-dependent uses.

(ii) Navigability is severely limited at the proposed site.

(iii) The commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives.

240(3)(d)

The last two paragraphs are general conditions that should be applicable to all types of development on all shorelines.

Ecology has amended the last two paragraphs as follows: "Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and in support of water-dependent uses and provided the size of the over-water construction is not expanded for nonwater-dependent uses. New water-dependent commercial development should mitigate impacts to shoreline vegetation according to WAC 173-26-200(2)(e)." Note that the mitigation requirements in section 173-26-200(2)(e) do apply to all shoreline developments.

240(3)(d)

Where is the nexus between having private property and requiring public access. No rules exist for downtown developments and that land is scarce? Why should this even be discussed if the State and various jurisdictions are doing their job?

The SMA requires that priority be given to use that are either water oriented or which "provide an opportunity for substantial numbers of people to enjoy the shorelines of the state."

240(3)(d)

Standards for industrial and commercial development should be strengthened to prevent harm in these areas.

Regulations regarding commercial and industrial uses are overly restrictive. Industrial uses have wide-ranging environmental impacts. The proposed rule imposes restriction as though such variations do not exist.

Ecology believes the guidelines will provide an appropriate balance between environmental protection and development.

240(3)(d)

Mixed-use development is not defined in the rule but is a reality in a number of Renton's shoreline. The rule gives preference to water-dependent development over mixed-use development. The implication is the rule was written under an old school of thought where all land uses are separated, and water-dependent uses are better for the shoreline environment than mixed-uses. The rule appears to have a bias against any type of residential use on shorelines.

In many cases, shoreline development cannot be categorized into a single type of use. The economics of land use and the goal of creating visually appealing and functional shoreline developments frequently calls for mixed shoreline uses. Mixed use allows a variety of uses to occur along the shoreline as part of the same development or series of development. For instance, water dependent businesses such as marinas can be coupled with higher revenue businesses such as restaurants, retail, and residential. This type of mixed use preserves the character of the shorelines only because the other uses make the overall project economically feasible. Mixed-use development is one of the clearest trends in shoreline land use across the country. The proposed guidelines lack any provision for mixed use or guidance for local governments on how mixed use can be encouraged through local SMPs.

The policy of the SMA establishes priority for water-dependent, water-related, and water-oriented uses that must be honored by the guidelines. Ecology believes that mixed use development can be a good thing, and can be achieved while honoring this policy. Ecology believes the guidelines give local governments fairly broad latitude to plan for appropriate uses of their shorelines consistent with the policy.

240(3)(e) Forest practices

It appears that DOE intended for local governments to defer to state forest practices rules except for Class IV-General forest practices. Some local governments might disregard this in parts of their SMPs or inadvertently fail to clearly exempt forest practices not in Class IV-General from various provisions that could depart from or even conflict with forest practices rules.

We urge DOE to include a clear section in the beginning of the rule, e.g. a new section -110, making clear that commercial forest management activities in shorelines are subject only to state forest practices rules except for: (1) Class IV-General forest practices, (2) harvest of more than 30% of the trees within 200 feet of the ordinary high water mark in shorelines of statewide significance, where approval of DOE or local government is needed under RCW 90.58.150, and (3) those portions of the shorelines designated as "natural" environment where the master program may include specific additional restrictions on forest practices to the extent needed to achieve SMA policies.

This general section should apply to both the default approach (Path A) and the optional approach (Path B). It should be cross-referenced in various sections that otherwise might be interpreted as directing local governments to overlay local use regulations on top of the state forest practices rules, e.g. to protect archeological and historical resources [-220(1)], GMA-designated critical areas [-222(2)(a)], areas with degraded ecological functions and ecosystem processes [-220(2)(b)(v)], wetlands, geologically hazardous areas, critical saltwater habitats, riverine corridors and other freshwater fish and wildlife conservation areas [-220(2)(c)(i), (ii), (iii) and (iv)], fills [-230(3)(c)], public access [-220(4)], vegetation conservation [-220(5)], ecosystem-wide processes affected by water quality and flow characteristics [-220(6)(b) and (c)], etc.

The forest practices rules, including those adopted under the Forests & Fish program, address those kinds of issues for lands that will continue to be managed for commercial forestry. Except as noted above, the guidelines should direct local governments to rely on the FPA achieve these objectives with respect to commercial forestry in shorelines.

The intent of the guidelines regarding forestry is that the policies and regulations of the SMP should, at a minimum, be consistent with the forest practices act regulations. That is not intended to say that all regulation of forest practices is deferred to the state. Local governments have latitude to address circumstances where, in their judgement, a greater level of regulation is necessary. The provision suggested is inconsistent with the provisions of the SMA.

240(3)(e)

Add this: "Local master programs shall rely on the Forest Practices Act & rules implementing the Act & the Forests & Fish Report as adequate management of commercial forest uses within shoreline jurisdiction."

Use of the term "should" in this provision allows local governments to deviate from the Forest Practices Act and rules implementing the Forests & Fish report where necessary and appropriate to implement the policy of the SMA. At the same time, considering the definition of "should," the use of the word gives clear direction that the preferred approach in most circumstances is to defer to these laws and rules.

240(3)(e)

Harvests removing more than 30% of the trees within 200 feet of the ordinary high water mark in shorelines of statewide significance should remain subject to informal approval by DOE or local government, and not subjected to conditional use permit procedures. RCW 90.58.150 requires approval of either the local government or DOE for removal of more than 30% of the trees within 200 feet of the ordinary high water mark on shorelines of state-wide significance. Such approvals have been granted informally. DOE now proposes to require conditional use permits, which need formal approval by both the local government and DOE.

The SMA does not require even substantial development permits, let alone conditional use permits, for timber harvest. Although it specifically provides for conditional use permits for other purposes, the SMA does not require them for clearcutting in shorelines of state-wide significance. By allowing informal approval by either the local government or DOE, the legislature indicated that such timber harvests were not intended to require substantial development permits or conditional use permits or be subject to any comparable procedural requirements.

The language in RCW 90.58.150 leaves some ambiguity as to the authority of local and state government to approve commercial timber harvest on shorelines of statewide significance. The requirements for obtaining a CUP provides clear lines of authority for authorizing commercial timber harvest.

240(3)(e)

By relying on the F&F Report & FPA you are opting out of the 200 foot rule and seriously weakened shoreline protection. This rule offers much less protection for shorelines than the old rule. The width of riparian buffers under F&F depend on site class which is based on ability to grow Douglas fir. Many shorelines are too wet to be good ground for Doug fir. Most shorelines will fall under a lower class and buffers will be smaller. F&F offer no protections for forested wetlands.

We disagree with this entire section that, will among other things, allow activities conducted under rules promulgated under the Forest Practices Act to be considered as adequate management of shorelines and commercial forest uses.

The provisions of RCW 90.58.150 remain applicable to Shorelines of Statewide Significance as referenced in this section. The requirements of the Forest Practices Act apply in addition to that provision where it is applicable and to all shorelines where forestry is conducted. This assures protection of shoreline resources and coordination of requirements between the two laws.

240(3)(e)

We strongly disagree with local government designating commercial forest land "natural". Ecology should leave no discretion to local planners to call for different protection measures other than those required under the Forests & Fish Report and the Forest Practices Act. It would allow subjective local government interpretation, & the rural conservancy goals/policies are much more in alignment with commercial forestry than natural.

173-26-210-(4)(a)(ii)(C) specifically allows commercial forestry in "natural" shoreline environments. 173-26-240(3)(e) directs master programs to rely on the Forest Practices Act and it rules except for Class IV forest practices. Clearcutting, converting forest land to other uses, and other types of Class IV "development" are not exempt from having to comply with the Shoreline Management Act and Ecology has no authority to exempt them. Protecting forested shorelands from the impacts of clearcutting and conversion to other use is necessary to comply with the policy of RCW 90.58.020.

240(3)(e)

Add to end of 2nd paragraph: "Where timber is removed developers shall consult with local governments and affected Indian tribes to determine where placement of same may benefit PFC for PTE species.

☒ The State Environmental Policy Act, Shoreline Management Act, and the Growth Management Act require opportunity for tribal and public input. See RCW 90.58.140(4), RCW 36.70B.110, WAC 173-26-100(3), WAC 173-27-110, WAC 197-11-340(2)(b), WAC 197-11-360(3), and WAC 197-11-455(h).

240(3)(e)

The guidelines prohibit residential development within a shoreline jurisdiction on forest lands converted to residential use if the development would cause 'significant vegetation removal, grading, or development.' This requirement is vague enough that DOE could theoretically ban residential development within 200 feet of surface water on converted forest land (affecting future development in a large part of many counties). We are asking DOE to clarify this language and to justify this prohibition based on Best Available Science.

The statement that "shoreline master programs should contain provisions that ensure when forest lands are converted to another use, significant vegetation removal is not allowed" needs to be clarified. Forest practices, by definition, generally require a fairly significant amount of vegetation removal (the trees). Furthermore, what is considered significant is different to everyone. Does significant mean quantity of trees, size of trees, species, or some percentage of a total?

☒ The preservation of existing shoreline vegetation when a forestry use is converted to another use is necessary to assure that the existing level of resource protection is maintained. Ecology has modified the rule to read: "Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to nonforest uses shall ~~minimize~~ avoid significant ecological impacts to the shoreline environment and maintain the ecological quality of the watershed hydrologic system. Master programs shall establish provisions to ensure that all such timber removal is consistent with the master program environment designation provisions and the provisions of this chapter. Applicable ~~S~~shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, including a residential use, significant vegetation removal, grading, and development are not allowed, except for low-intensity water-dependent uses and public access that ~~sustains~~ protect or restore ecological functions~~, are not allowed within shoreline jurisdiction~~."

This change clarifies that the purpose of the provision is to assure protection of the resource values and prevent ecological impacts from development.

240(3)(e)

WDFW should also be consulted for Forest Practices since we have staff specifically assigned to implement Forest and Fish.

☒ The rule states that "where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators." WDFW would be considered an "applicable agencies" in this case.

240(3)(e)

The third paragraph refers to "forest lands of long-term commercial significance." A definition for that term needs to be provided.

☒ Ecology has revised the language to clarify that the term is derived from the Growth Management Act and is a reference to designation as required by RCW 36.70A.170(1)(b). The rule now reads: "Lands designated as "forest lands ~~of long-term commercial significance~~" pursuant to RCW 36.70A.170 shall be designated either "natural," "rural conservancy," or equivalent environment designation."

240(3)(e)

The SMA recognizes that master programs may provide for preservation of publicly owned shorelines (see RCW 90.58.100(4). If shorelines now in private ownership are found to have such high values for non-economic uses that they should not be managed for commercial forestry or other economic uses, the master programs could identify them as candidates for acquisition by public agencies or non-profit organizations and provide for them to be designated as natural upon such acquisition. This could encourage all stakeholders, including many landowners, to work constructively toward that goal. However, since regulations cannot and should not prohibit all economic use of private lands without compensating the owner, generally it should be assumed that private lands will be put to some economic use unless acquired by a government agency or non-profit organization. In most cases long-term commercial forest management under the state forest practices rules and the Forests & Fish program is the economic use that best serves the SMA goals for forested shorelines.

☒ Actions by the state to acquire resource lands should certainly be coordinated with local planning including shoreline planning. As a general matter, such actions are beyond the scope of this regulation.

240(3)(f) Industry

This section requires environmental cleanup and restoration as a condition of all industrial development and redevelopment. This limits non-water oriented industrial development to nonnavigable shorelines and essentially prohibits new structural shoreline stabilization measures for industrial sites. These restrictions are not roughly proportional to the impacts from each type of industrial and commercial development and will significantly diminish the longevity of many existing uses and the feasibility of redevelopment for more beneficial uses. Prohibiting shoreline stabilization and requiring restoration of ecological functions on existing sites will cause severe economic impacts and is clearly at odds with the SMA's required balance between environmental protection and development rights.

The lower Duwamish is an example of where the current SMP has the flexibility to allow redevelopment while promoting environmental and habitat improvements. Eliminating this flexibility will result in the loss of the opportunity to feasibly develop or redevelop in a manner that promotes the goals of the SMA, leaving vacant or underutilized parcels in industrial areas in their current decaying condition.

You state that there will be no non-water related development within the shoreline zone. That is ambiguous to me. I have large manufacturing buildings and equipment going on within that 200 foot zone along the Blair waterway that would not be classified as water-related.

☒ The policy of the SMA requires that preference be given to uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shorelines. The policy also states that priority shall be given to industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state. The provisions of this section implement this policy by assuring that all industrial develop address issues of clean up and restoration where feasible and that non-water oriented industrial development should only be allowed where it incorporates ecological restoration and does not displace potential water dependent or related industry.

Ecology has added a provisions that addresses expansion of existing uses which states: "Additions or modifications to existing nonwater-dependent development may be allowed on shorelines navigable for commercial transport, provided restoration and public access are provided where feasible."

This assures that existing facilities will not be disadvantaged by the rule.

240(3)(f)

New development, industrial development, has to provide public access. I can just see the general public coming across a heavy industry site. I am responsible for the safety of all people on that site and I would have a difficult time with that.

See public access provisions of section 220(4)(d)(iii) that provide for exceptions to this provision including an exception for "where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment…"

240(3)(g) In-stream structures

There is no mention of protection for any man-made structures. This overlooks the situation where jurisdictions have been authorized to place barbs in streams to protect existing public facilities (like roads, bridge abutments, etc.).

Instream structures are placed for a variety of reasons that are consistent with the public interest including those mentioned in the comment. The direction of the provision is to assure that such structures are in the public interest and take care of shoreline environmental resources also. Existing structures may be maintained in accordance with the normal maintenance and repair provisions of WAC 173-27.

240(3)(g)

Installation of woody debris or other engineered in-stream structures for habitat enhancement are regulated by requiring that they "give due consideration to a full range of public interests and environmental concerns." This will slow the design and implementation of such needed restoration projects, when the current HPA and Corp 404 regulatory system are more than adequate to regulate these types of projects.

Compliance with the provisions of the SMA and the SMP is a long standing legal requirement not effected by the provisions of these guidelines. It will neither lengthen nor shorten the process to obtain full legal authorization of a project.

240(3)(h) Mining

Unlike other uses, aggregate needs to be obtained from the source areas, with round rock resources being very site specific. The resource does not move with the alteration of jurisdictional and/or political boundaries. It cannot be relocated to gain a better view, or adjusted to facilitate public access. Research has shown that certain products (high strength concrete) requires the use of round rock obtained from floodplain and near floodplain sources. Therefore, to fulfill society's needs, round rock aggregate, including sand, must be obtained from the floodplain and near-river sources. The proposed language says that no current mining would be allowed to continue unless new studies are done. An existing operation will need to immediately conduct a number of studies and await permission to continue operations. There should be some provision to "grandfather" current mining and make mining "exempt" from the burdensome restrictions proposed.

The tone of this citation is negative to the industry, not found in reference to other uses. The first sentence of the proposed regulation adapts assumptions of historic mining practices not attributed to other uses, including Industry. While residential, industrial, and agricultural uses impact the shoreline environments to equal or greater extent, such descriptions and assumptions are not applied to them in the regulatory text. As in all industries, worst case scenarios can be documented in both the past and present demonstrating very poor management practices resulting in environmental destruction, with the gaining of near-term profit without consideration of future needs and responsibilities. The aggregate industry has matured and strives to restore functions lost by the impacts of society while providing a needed resource. The proposed regulations should alter the tone of the language from anti-mining to a neutral position. This section treats this use far more harshly than (a) agriculture, and (e) Forest practices. Comparison of these sections is dramatic as clearly forest and agricultural practices are the more preferred and allowable of these natural resource industries. The overall assumption to the industry is under no circumstances is mining an allowable use and would appear to be predicated upon the predetermined disposition or prevailing attitude of the Department with regard to this activity. It would be appropriate to consider full and equal treatment and how this would apply to surface mining when compared to the more rational forestry and agricultural sections. We submit using the forest and agricultural sections as sole reference, an appropriate revision. (Commentor include specific language suggestions paralleling agricultural use section…)

The most alarming provision in the revisions is the last paragraph that universally applies the requirement of the studies to "locations where gravel removal has been allowed in the past" and declares "any future authorization to continue" shall be based on studies as required above." In no other section and certainly not within agricultural and forestry sections are new studies required to continue existing operations regardless of industry activities or impacts they may have generated in the past. In fact the revisions do not apply equally over all industries. In section RCW 90.58.030 (3)(e) "New shoreline master programs should NOT apply, retroactively to existing agricultural uses." We would ask Ecology to defend this unequal application of the revisions to all affected industries without regard to past impacts. This is an inexcusable and a blatant attempt to selectively cater to large opposition demonstrated at specific public hearings.

The introductory paragraph and section (i) both totally ignore the potentially positive effects that mining can have, such as creation of small pools and backwaters adjacent to rivers; some of this (bad and good) is addressed in Washington Geology, vol. 26, no. 2/3, Sept. 1998). Instead of the nearly blanket restriction on mining incorporated in these rules, the rule should encourage any possible beneficial mining. There is no basis for the statement about "potential" damage to the ecological functions or ecosystem-wide processes. There is no credible scientific evidence to support this. Studies and analysis of completed mining projects within the flood plain show that when they are used for off-channel habitat, they have the potential of supplementing the loss of fisheries habitat. Aggregate production and ecological restoration are not mutually exclusive. With proper planning and operation, they can be quite compatible and, with proper desire and science, aggregate development can enhance a degraded ecology. Research performed by Dr. Bayley and others is investigating if the use of off-channel mining systems can be a cost-effective and available restoration technique in restoring floodplain functions and values. Research is currently being conducted along the Willamette river, focusing on terrestrial feeding habits and inter-flood use of mine pits by salmonid species. Preliminary results show that not only do the species survive in these habitats, but thrive, producing larger body weights and size growth than their counterparts restricted to the riverine systems. Modern mining and reclamation practices enhance and supplement previously degraded shoreline environments by opening floodplain access and re-establishing functional values lost by previous social impacts (such as agriculture, industrial, and residential uses). The regulatory text should

include mention of beneficial impacts of floodplain mining and reclamation for the enhancement of ecological functions. Is Ecology intending to serve the shorelines and create protections and restorations based on any applicable science or will they simply not apply the rules to groups that strongly oppose them? Therefore for the record, we on behalf of the sand gravel concrete and asphalt industries strongly oppose the proposed revisions and expect the same and equal treatment given to others that have also opposed them regardless of past practices, past impacts, and the ability to mitigate to new revisions at the same level as forestry and agriculture.

The provisions of 173-26-210(5) require that local governments coordinate shoreline designations with GMA designations of mineral resource lands as a means of addressing this issue. The provisions of the mining section recognize that mining and associated reclamation can be conducted in a manner that is consistent with protection of shoreline environmental resources when appropriately sited and conducted.

Mining is an exception to the general rule on ongoing and existing uses because mining is, by its very nature, development as defined by the SMA and as such, mines must have a current valid shoreline substantial development permit to legally operate.

Unless otherwise specifically noted in the permit, substantial development permits expire after five years. Amendments to the SMA in 1996 allowed issuance of substantial developments permits with a term of more than five years, however all permits issued prior to 1996 expire after five years. The requirement to have a substantial development permit is established in the SMA and is not being, and cannot be, changed by the guidelines. Since a substantial development permit is required, it is necessary and appropriate that the guidelines address requirements for renewal of such permits. The provisions address shoreline specific requirements and otherwise defer to chapter 78.44 RCW, the Surface Mine Reclamation Act.

The provisions of 240(3)(h) are not a blanket prohibition of mining. Where mining can be conducted in a manner that provides habitat and addresses other operational impacts it may be authorized.

From a shoreline management perspective, the major difference between agriculture, forestry and mining is that mining cannot be conducted on a sustained use basis. Also note that forestry rules have been substantially updated very recently to address fish habitat and protection. The agricultural industry is in the process of doing so now. We are aware of no such effort regarding mining.

240(3)(h)

Current regulations have been successful in maintaining the integrity of the shorelines in eastern Washington. In 1998, The Yakima Indian Nation sued Central Pre-Mix, Yakima County and Ecology for re-issuance of a shoreline permit for the Selah Pit. The permit was upheld and no violation had occurred (SHB No. 98-42). The board found NO evidence that any mining activity was affecting habitat or threatening the Yakima River. The current regulation regarding the shoreline jurisdiction definition within 200-feet from the ordinary high water mark of a river is sufficient to ensure that no "harm" is done to the rivers or streams. As proven in the YIN vs. CPM case (SHB No. 98-42), hyporheic functions can be protected within this setback. Vegetative buffers are also sufficient within this setback to accommodate any environmental issues within the shorelines of the state.

As proposed, the Guidelines reverse longstanding precedent from the Shoreline Hearings Board holding that properly managed and conditioned, gravel mining is consistent with the goals and purposes of the Shoreline Management Act. The most recent pronouncement of the SHB regarding surface gravel mining in shoreline areas (YIN vs. CPM) states: "We hold that to the extent appellant desires to preclude gravel mining from the shorelines of the state, including the flood plains of the Yakima River, this position is inconsistent with the SMP and the SMA." (SHB No. 98-42, p. 13.)

New reclamation standards under the Department of Natural Resources (DNR), Surface Mining Act 78.44 are "among the most stringent in the United States", according to DNR personnel. The proposed SMA regulations go beyond these standards. This adds another layer to regulations. Let DNR do their job. Current reclamation laws require that most mines be reclaimed as beneficial wetlands. What we have is working and is improving with the completion of the current mines and as new aggregate mining is permitted.

Ecology agrees with the premise that properly managed and conditioned, gravel mining is consistent with the goals and purposes of the Shoreline Management Act. Ecology understands that this is precedent from the Shoreline Hearings Board. However, the Guidelines do not reverse SHB precedent because the rules do not exclude mining from SMA jurisdiction in all circumstances. Ecology believes the mining use provisions assure that future authorization for gravel mining will be appropriately scrutinized, and where allowed, be appropriately conditioned to assure consistency with all the policies of the SMA.

240(3)(h)

Requirements for reclamation and adhering to mining requirements are redundant, as local ordinances and state regulation, through Washington DNR, already address these issues. The inference is that the industry avoids these requirements, which is no more accurate for mining as is for any other industry or use, including residential, industrial, and agricultural.

By today's scrutiny of permit applications, ability for all state agencies, local governments, and the public at large to comment throughout the process, our industry can and does create significant habitat for both shoreline and non shoreline applications. The hiring of and communicating with appropriate consultants to address this issue up front in the permit process is ample opportunity to meet the intended spirit and requirements of the SMA. As in the case of forest practices, subsections (ii) and (iv) should simply refer to the Surface Mining Reclamation Act, Chapter 78.44 RCW, as the guidance for reclamation requirements.

The proposed regulations would prohibit activities which the Washington Legislature deemed to be in the public interest when adopting the Surface Mining Act, RCW Ch. 78.44. (See citation from the Surface Mining Act, RCW 78.44.010). The Department of Natural Resources has already adopted appropriate regulations which achieve the balance envisioned by the allowing the production and conservation of minerals with appropriate environmental controls.

Insert 6th para: Lands designated, as "Mineral lands of long-term commercial significance" shall be identified by their geological occurrence or, per mapping conducted by the Dept. of Natural Resources and designated either natural; rural conservancy or other appropriate and equivalent environment designation.

The GMA at RCW 36.70a.050 says "the Department shall adopt guidelines under chapter RCW 34.05 no later than September 1, 1990 to guide the classification of agricultural, (b) forest (c) mineral resource lands and (d) critical areas. The department shall consult with...the department of natural resources regarding forest lands and mineral resource lands... " Currently, DNR is going through an exhaustive process of mapping mineral resource lands per

quadrangle statewide. Has Ecology consulted with DNR on mineral resource land mapping and the location of these mineral resource areas?

Has Ecology considered WAC 365-190-070 as drafted by DCTED with regard to the criteria for designation? Requirements include: "shall identify and classify aggregate and mineral resource lands from which extraction of minerals occurs or can be anticipated Criteria includes: (b) Mapping of resource lands, (c) provide access to mineral resource lands to minerals of long-term commercial significance is NOT knowingly precluded (d) consideration of 13 other criteria as indicated by; viii: physical and topographic characteristics of the mineral resource site including physical properties, xiii resource availability of the region.

The GMA embodies strong legislative policies to protect and conserve commercially viable mineral lands from incompatible uses. These lands contain sand and gravel, important resources that must remain available to the citizens of the state. The GMA, instead of prohibiting gravel mining in shoreline arias, fosters this use and seeks to protect it from incompatible and conflicting uses. The legislature required Ecology to integrate the new SMA rule with other land use laws, in particular, the GMA. The WACA sees little if any reason for conserving mineral lands under the GMA, from incompatible uses, on the one hand, while Ecology on the other has proposed rule that would effectively place a moratorium on gravel mining in all shoreline and shoreland areas. These proposals are in direct contravention to the GMA and the Surface Mining Act.

☒ Ecology has revised the rule to read: "Lands designated as "mineral resource lands ~~of economic importance~~" pursuant to RCW 36.70A.170 and WAC 365.190.070 may be ~~designated as an alternative environment designation~~ assigned a subdesignation of "rural conservancy" environment that allows mineral extraction, provided the provisions for that designation conform to WAC 173-26-240(3)(h) and this chapter and protect ecological functions."

The Surface Mining Act does not overide the provisions of the Shoreline Management Act. Mines located with the jurisdiction of the Shoreline Management Act must comply with both laws.

240(3)(h)

Subsection (3)(h) inappropriately puts DOE and other unknown agencies in the position of approving who is a "qualified professional" to conduct a hydrogeological or biological study. This provision interferes with the legitimate role of the Department of Licensing and the various licensing boards to set qualifications and standards for who is qualified to perform hydrogeological work or biological studies. The legislature has not given DOE this authority.

☒ The hydrogeologic and biological analysis required by the rule are not disciplines which fall neatly with any category of professional currently licensed by the state, nor is Ecology licensing individual to do such work. The term "qualified professional" indicates a narrative standard recognizing that qualification in these disciplines is largely a matter of training and experience evaluated on an individual basis. Ensuring that work be done by qualified professionals directly furthers the SMA purpose of protecting the state's shorelines as fully as possible.

240(3)(h)

Mining and associated uses are not allowed where such uses would result in short term or long term significant ecological impacts... The Department has certainly covered all the bases here with the inclusion of both long term and short-term impacts. As written there is not a conceivable way any such use regardless of mitigations could be proposed much less allowable. As written, the objective of 3(h) would not require any more verbiage to accomplish its intended goal. It is wholly without consideration to the existing permit process where impacts must be addressed and mitigation's presented. Should impacts be unable to be mitigated satisfactorily to DNR, Ecology, and local governments the permit would not be issued.

Where mining and associated activities are allowable, they must be conducted in a manner... Review of the environmental designations and the purpose and management policy statements contained in WAC 173-26-210, none of the designations (A-F) as written would allow mining to even be contemplated let alone take place. This is further and clearly illustrated on page 43 Figure 6. Yet forestry and agriculture are considered a permitted or allowable use in the rural conservancy zone.

The prohibition on the destruction of priority species habitat is excessive and does not recognize exceptions such in incidental take permits or other regulatory provisions controlling critical habitat. This sentence should be deleted.

This section states that mining is prohibited if it entails the destruction of priority species habitat. This would make it virtually impossible to approve any new mining activities within shorelands.

☒ The guidelines state that "Master programs shall include policies and regulations that assure: (i) Mining and associated activities are not allowed where such uses would result in short-term or long-term significant ecological impacts **to shoreline ecological functions or ecosystem-wide processes** *(emphasis added*)." This is not a "one strike and you're out" clause. If impacts can be avoided or mitigated, mining can be allowed in shoreline environments.

240(3)(h)

Insert 3rd para: New development, clearing, and grading in support of mining uses shall be located based upon sound geological science with full consideration of the, resources as mapped by the Department of Natural Resources and designed to avoid impacts to shoreline environments. Applicable master programs shall include standards for setbacks, water quality protection, environmental impacts and vegetation conservation as described in WAC 173-26-220(5) for new mining development, clearing and grading in shoreline jurisdictions.

Insert 4th para: Requirements for setbacks for new development shall be based on scientific and technical information and management practices adopted by applicable state agencies necessary to preserve the functions and qualities of the shoreline environment. In areas where removal of resources of sand and gravel from a location waterward of the ordinary high watermark of a river or other areas where dredging is contemplated, the regulations shall be sufficient to ensure no net loss of habitat viability and appropriate vegetation restoration. If the shoreline habitat has been degraded through, the development or previous mining practices, the master program shall include provisions that result in approved habitat over time.

Insert 5th para: Once mining practices have been completed and where there is a likelihood of an approved subsequent use that is consistent with the policies of the environmental designation in which they, are located hew uses shall minimize impact to the shoreline environment and provide the restoration as prescribed by the best management practices for reclamation as authored by the Dept. of Natural Resources.

☒ Ecology believes the issues raised in the suggested additions are already addressed appropriately in the mining section, and in the General provisions of Section 173-220 (which are applicable to all uses).

240(3)(h)

Insert 7th para: When mining practices fall within the applicability of the Surface Mining Act (RCW 78.44), local governments shall consult with the Department of Natural Resources, other applicable agencies and local industry owner and operators.

The local governments are required to "insure that all persons and entities having an interest" have a full opportunity for input in the SMP development process by the provisions of 173-200(3)(b) and as required by RCW 90.58.130.

240(3)(h)(i)

These revisions completely disregard this painstaking process; the scientific evaluation of a permit application even before the permit or activity is contemplated, and assumptions are made up front that all impacts associated with this activity are unable to be mitigated. Clearly this is unacceptable and an irresponsible position for the Department to take. This subsection effectively is an outright ban on mining in the shoreline area, particularly in light of the broad definitions of significant ecological impacts. This provision fails to recognize that adequate mitigation may be identified through the SEPA process. Because the substantive and procedural requirements of SEPA would clearly apply to any such activity, this provision is unnecessary and should be deleted.

The provision of this section provide the framework for scientific evaluation of a permit as necessary to assure consistency with the policy and provisions of the SMA. These provisions are neither designed nor expected to be a ban on mining in the shoreline, which could have been accomplished with many fewer words. Compliance with the provisions includes consideration of mitigation proposed and designed into the project.

240(3)(h)(iv)

Curious language as the previous section does not consider mining an allowable use. The concept of restoration of a subsequent use of an activity that would have difficulty taking place at best indicates that surface mining activities -must .in deed be allowable somewhere. I would encourage Ecology to look beyond whatever past or historical practices they have based these revisions upon. Reclamation is the second best activity we as an industry accomplish. This is evidenced by the dramatic rise in reclamation of surface mining segments since the passage of RCW 78.44 in 1993. Ecology is extremely short sighted when it does not acknowledge the considerable expertise the industry has in creating examples of shoreline and non shoreline restoration.

The intent of this provision is simply to assure that whatever subsequent use of the property is planned as a basis for the reclamation plan, is consistent with the environment designation. It seems only reasonable that a plan of operation based on a particular subsequent use, first assure that the subsequent use is allowable.

240(3)(h)(v)(A)

This provision is unnecessary, as hydrogeological studies are currently required under RCW 78.44.091. Additionally the provision does not contemplate the permit requirements as directed through the Army Corp of Engineers and hydraulics permits that do not currently allow removal of more materials than a waterway can efficiently produce.

The study is already becoming a study of necessity and often a requirement of the EIS analysis and SEPA threshold determination. With 4(d) rules and other ESA requirements the preparation of a biological study will most certainly be the norm in accordance with Fisheries and NMFS project review.

This provision is designed to be coordinated with those requirements not to supercede them. The standard set is necessary to assure protection of shoreline resources. If the US Army Corp of Engineers and hydraulics permits already require hydrogeological studies, they will likely be able to be used to demonstrate compliance with this standard.

240(3)(h) para after (v)

In second to last paragraph after (v) should clearly limit its applicability to mining activities conducted waterward of the ordinary high water mark.

The provision is intended to apply somewhat more broadly than the provision above which applies strictly waterward of the OHWM. The requirement for a conditional use permit assures consideration of the broadest state interests in the channel migration zone as a critical habitat and human safety concern.

240(3)(j) Residential development

This rule in essence makes law-breakers of home owners who cut down their trees to maintain their views.

Section 240(3)(j) addresses subdivision of land into lots or conversion of land from less intense uses. It does not apply to existing lots or existing residential uses. The intent is to assure that new development be sited and designed in a manner compatible with preservation of the natural resources, character and ecology of the shoreline. Any limitations on use of the lots would be apparent before anyone chooses to buy a lot or build a home. Under the guidelines local governments do have the obligation to establish standards related to conservation and restoration of shoreline vegetation.

The guidelines state that such provisions should not be applied retroactively to existing uses and structures, therefore maintenance of current landscaping and vegetation will not be effected. Future actions that result in a decrease in ecological function should be regulated however, depending on the approach that a local government chooses, activities that are intended to provide views, enhance views, or address safety issues may be allowed.

240(3)(j)

What provisions are there for a grandfathering clause to allow development of property in established residential neighborhoods consistent with properties that have already been developed? What provisions are there for granting exemptions from these guidelines in cases where the guidelines destroy the residential value of property that has no dwelling? What provisions are made for the added costs & burdens property owners will incur when applying for exemptions? Please provide a copy of the report assessing damages & costs to private property owners when complying with these guidelines, and how they will be compensated.

Property already urbanized and plated should be exempt from the 250 ft setback. Since the 250 ft setback rule was implemented 2 big houses have been built down river from us.

Provision is made in this and other sections of the rule that establish different standards for areas of existing development. In addition, the SMA and WAC 173-27 provide for variances in circumstances where the effect of the local SMP unfairly burdens a property owner. The requirement to comply with the policy of the SMA has been in place since 1971, and is therefore not a new requirement.

One commentor referenced a 250 foot setback. The commentor may have

mistaken Ecology's proposed rule for a local regulation, as there is no 250 foot setback in the shoreline master program guidelines.

240(3)(j)

Master programs should include shoreline setbacks, density regulations . . .". The SMA requires regulations as part of an approved master program. Including regulations for residential (or any other development) should not be an optional "should".

Ecology believes "should" is more appropriate, because in some cases some of the provisions will not apply. For example, on-site sewer systems standards are not appropriate where sewer is available.

240(3)(j)

3rd para: Not sure how this would apply. If I was to sub-divide my land and only one of the new blocks, for instance, was a "shoreline" block, would I have to do this public access bit?

Whether public access or community access is required would be determined by the provisions of the local SMP. The public access provision of 240(3)(j) requires that the issue be addressed for all subdivisions of more than four lots or for any multifamily residential development.

240(3)(j)

I'm within 200 feet. If my house burns down can I rebuild it? Is it not a good form of use?

If the damaged structure meets current standards (setbacks, buffer requirements, etc.) in the SMP, it could be rebuilt with the same configuration. If it does not meet current standards, reconstruction would be required to meet the standards of the local SMP related to nonconforming uses. If the local SMP contains no such standards, WAC 173-27-080 Nonconforming Use and Development Standards would apply as the default.

240(3)(j)

Will we be able to build our house on an existing lot adjacent to Long Lake in Spokane County?

It is highly unlikely that property owners would not be able to build on a legally existing shoreline lot. They will however, have to meet the setback, buffer and related standards contained in the local SMP. Property owners would be well advised to consult their Planning and Building Department.

240(3)(j)

Will I be allowed to build my house 25 ft from my bulkhead on my empty lot south of Discovery Park?

The SMA and SMP is administered at the local level. For answers to specific questions, landowners need to consult with their appropriate local government (typically the planning and building department).

240(3)(j)

I object to the proposed restriction on residential properties as not being based on scientific study. I fail to see any adverse impact of siting a house as close as 35 feet from the shore and challenge DOE to provide scientific proof to the contrary.

While it does depend somewhat on where you are, substantial evidence indicates that loss of shoreline vegetation adversely impacts habitat values of the nearshore area. In addition homes located closer to the water are more likely to require construction of shoreline stabilization measures such as bulkheads which also alter the shoreline in a manner that is damaging to nearshore habitat. The effect of any one home may not be significant, however the effect of many can be great, and past residential development practices have clearly contributed to the decline of fish populations.

240(3)(j)

We are blessed with waterways that are alive: liveaboards, floating homes and houses on piling reside next to shipyards, parks, retail, manufacturing, marinas and sales yards. We didn't need any rules to co-exist peacefully until there was a regulation to point to. There is one sentence in both Path A and Path B (page 71 & 152) that states "New over water residences, including floating homes, are not a preferred use and shall be prohibited. This statement needs a lot of clarification both in reasoning and in reference. Does this grandfather any existing apartments, condos, floating homes, homes on piling or caretaker quarters that are already in use? Does it intend for anyone to be able to rebuild or replace? Do they want Seattle to abolish their Urban Residential Zoning? If not, does this make these zones so high priced that GMA is defeated? Growth Management - to us - means that we must all take a little more growth than we'd care for. With prices skyrocketing, what are we achieving with this rule?

If this is the most logical use of the water and our environmental rules are being obeyed, what are they so afraid of? What possible difference does it make if a building on piling is being used commercially or residentially? It really does seem illogical to those of us who use the water everyday, so another question becomes who is assuming these are not preferred uses and Why? Does the rule include the persons staying aboard their boats, i.e. liveaboards? If so, are Marinas that have liveaboards allowed to replace one boat with another? If not, what is a liveaboard? Does it include boating tourists, tour boats to other destinations, fish boat crews, NOAA ships, the Coast Guard, Navy or those who use their vessel as a weekend getaway four weekends a month? We understand that there are those places in Washington that are literally being overwhelmed with boats on buoys on State Land, so please address that problem.

The requirement to prohibit houseboats and floathomes appears to this Department to be arbitrary and capricious. DOE has not demonstrated a good reason for prohibiting them, and this Department strongly disagrees with this proposed requirement. Many shoreline uses are not preferred uses, such as dairy farms, any kind of agriculture, signs, parking, and public roads, yet they are allowed. Not being a preferred use does not automatically eliminate the use. The conditions under which floathomes and boathouses can be developed should be strictly regulated, as should the areas where they can be located. Domestic wastes from both should be required to be pumped to an upland septic system.

Further, we cannot find anything in the Master Program language to stop people from living aboard their sailboats or other vessels and the end result is the same. It would be far better to regulate where these floathomes and boathouses can occur rather than to prohibit them. This county has areas where floathomes and boathouses do not create environmental impacts and do not impact the public's ability to use and enjoy shorelines, especially along diked areas that have steep banks, deep water, and no access for the general public.

Legal pre-existing uses, including over-water uses, are grandfathered. Rebuilding and replacement activities would have to meet the requirements for non-conforming uses contained in WAC 173-27-080.

Residences clearly are not water dependent uses. They do not require an over water location in order to function. While the SMA accommodates many non-water-dependent uses, including residential and agricultural use on the shorelands, location over the water requires a higher level of need to be demonstrated. This is because the use is occupying space that would otherwise be available for the public at large to use or would be available for use by a water

dependent use. Over water use also has significant individual and cumulative impacts to shoreline resources. While such use is to be discouraged in the future, Ecology recognizes that existing floating home communities exist in various locations in the state that must be accommodated.

Live-aboards are addressed in Section 240(3)(c) Boating Facilities section. They are a separate and somewhat difficult issue. Vessels are clearly a water dependent use. Living on boats either for short or long periods of time is part of the normal use of boats. However, long term residency on board at a marina often means that the vessel is not effectively useful for navigation, may not properly manage wastes and discharges and contributes to a demand for additional moorage space. It is also noted that, within a marina, live-aboards provide a benefit in the form of low cost security and emergency response capacity that would not be available otherwise. The boating facilities section (240(3)(c) address these issues.

240(3)(k) Transportation and Parking

The restrictions on transportation and parking to only those where there is no other "feasible" option will be quite difficult to apply. This section does not contemplate roads which must cross SMA jurisdiction. These restrictions could compromise the health, safety and welfare of citizens. Roads should be permitted in SMA jurisdiction.

By creating a non-vegetated impervious surface along a shoreline, roads can harm the environment and preclude water dependent uses and public access. The guidelines do allow roadways in shoreline jurisdiction where other options are not feasible. Feasibility is specifically defined to include consideration of whether or not the action physically precludes achieving the project's primary intended legal use [see section 020(18)(c)].

240(3)(k)

Railroads must answer to federal law that preempts state regulations that interfere with federally controlled operations, except for requirements to protect human health and safety. The proposed guidelines as written could become bogged down in litigation and need to be abandoned or amended to be consistent with federal law and health and safety issues faced by railroads, their customers, and the communities in which they operate.

Ecology does not believe that anything in these guidelines will interfere with federal law as it applies to railroad operations. Railroads have been subject to requirements under the previous guidelines for nearly thirty years and have been able to operate, and we see no reason that would change.

240(3)(k)

First paragraph: "Transportation plans and project shall be consistent ... and environmental protection provisions. Master program policies shall be consistent with established transportation plans."

Ecology appreciates the fact that transportation systems are important public facilities. However, these guidelines implement the SMA. The guidelines provide the flexibility necessary to develop critical transportation systems.

240(3)(k)

[third paragraph] "Transportation facilities should be located, designed, and constructed... " Existing transportation facilities shall be allowed to be operated and maintained in all shoreline environments as a use allowed outright.

This suggestion is not consistent with the SMA or the definition of nonconforming use. However, the guidelines do not apply retroactively to existing development including roads, bridges, ferry docks, etc.

240(3)(k)

Crossings should not impinge on bankfull flows. Systematic analysis of transportation-oriented fish or bedload transport barriers at crossings and their correction should be part of the an overall restoration approach. Transportation infrastructure should similarly minimize impervious surface development and resulting changes to flow regimes.

The guideline calls for the mitigation of adverse impacts which should address the concern expressed in this comment.

240(3)(k)

The second para states that "circulation planning and projects shall support existing shoreline uses." This should be clarified to indicate that circulation planning and projects are to support existing shoreline uses that are compatible with the SMP, i.e., that master programs are intended to encourage only water-oriented uses.

Ecology has revised the language as follows: "Circulation system planning to and on shorelands shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects ~~shall~~ should support existing and proposed shoreline uses and ~~those provided for by~~ that are consistent with the master program."

240(3)(l) Utilities

It is unclear whether subsection (3)(1) allows for development or improvement of existing, dilapidated utility production and processing facilities. We emphasize the need to make allowances for utility extensions necessary to serve the general public, and suggest that the shoreline designations not further restrict such utility extensions. Utilities have limited time frames to complete jobs due to emergencies, weather, etc. Utilities rely upon statutory exemptions to complete normal operation and maintenance work, and those statutory exemptions need to be continued.

Ongoing and existing uses (uses that are established and not proposing to change their use or conduct development activities, including existing utility facilities), are typically considered to be "grandfathered." This means that they are either legal non-conforming uses or legal conforming uses and, unless they propose to change the use or conduct development, are not the subject of the regulations. Any proposal to change the use or conduct development would be subject to compliance with the local SMP. Normal maintenance and repair of existing and ongoing uses is provided for in WAC 173-27.

240(3)(l)

Electric transmission and distribution facilities must, due to their linear natures, occupy and cross shorelines. Hydroelectric generating facilities require water dependent uses of shoreline areas. PSE routinely installs, operates, and maintains facilities within shoreline areas covered under this program. The proposed guidelines do not properly account and provide for such uses. Therefore, the proposed changes to these guidelines will have a substantial effect on PSE's operations. They are likely to increase cost and adversely impact our ability to respond to emergencies, restore power and maintain reliable service. PSE encourages further dialog between Ecology, PSE and other representatives of the utility industry to ensure that any amendments to the guidelines properly provide for and do not

improperly or unwittingly impair or disrupt safe and reliable energy services.

The guidelines do not directly regulate the installation, operation and maintenance of the utility facilities, only the SMPs adopted pursuant to the guidelines have that role. The provisions of the guidelines, as expressed through local SMPs, when read together with the SMA and WAC 173-27, provide flexibility within the regulatory structure as necessary to assure that existing utility services will not be adversely affected and appropriately sited and designed new facilities will be accommodated.

240(3)(l)

Tthis section speaks to the placement of transmission facilities. Electrical lines used by the Douglas PUD are found within the 200 foot shoreline environment. The PUD provides electricity to Douglas County citizens and numerous other utilities. Placing lines within designated rights of way exposes the PUD to exorbitant line re-location costs. We prefer to place electrical lines within purchased easements to avoid future uncertainty. Many of the easements the PUD owns are found within the shoreline environment. We do not believe relinquishment of use of our easements found within SMA jurisdiction, by DOE rule, is fair, necessary or legal. The last sentence of this paragraph should be removed and the reference to "power lines and cables" should also be stricken from the new proposed rule.

There is no conflict between the interests expressed in the comment and the provisions of the guidelines. The rule says that "Utilities should be located in existing rights of way and corridors whenever possible." The intent of this provision is that new development be co-located with existing development as much as possible. It does not imply relinquishment of existing easements.

240(3)(l)

There should be a discussion within this section that addresses overhead utility needs to conduct integrated vegetation management. Suggestion - The following language should be included: "Routine and emergency vegetation management as part of utility corridor maintenance shall be allowed, providing adequate and appropriate vegetation replacement actions occur concurrent with these activities." Additional Comment - The "development" of underwater pipelines and cables on tidelands cause only minor and temporary impacts to the ecosystem. These impacts are mitigated through restoration requirements, in fact most often enhancement of ecologically degraded areas are effected through these projects. Once construction and restoration are complete there are no long-term effects on the environment. Therefore, it is inappropriate to discourage this type of activity, and this reference should be eliminated.

Ecology has revised the rule as follows: "Development of ~~underwater~~ pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance or that cause significant ecological impacts should be discouraged except where no other feasible alternative exists. When permitted, those facilities should include adequate provisions to ~~ensure~~ protect against ~~substantial or irrevocable damage to the environment~~ significant ecological impacts."

While it may be that the local SMP will require a somewhat different approach to shoreline vegetation management by utility companies, it is not intended that measures necessary to maintain existing facilities or for public safety would be eliminated. Something like the suggested language may be appropriate in a local SMP if the local government so chooses. The intent of the guidelines is to set broad parameters that allow local government to develop a specific approach to accomplishing the objective. The reference to pipelines and cables in the tidelands is not intended to discourage necessary utility crossings of shorelines but of using the intertidal area along the shoreline as a substitute for an upland location. These types of facilities are sometimes necessary but have long term impacts to the beach through alteration of the vegetation and substrate and the periodic need for access, replacement or maintenance in addition to the short term impacts associated with installation.

240(3)(l)

The PUD No. 2 of Grant Co. is concerned about the efficient provision of utility services, maintaining exemptions for low impact work and scientific studies, and consistency in the administration of the "substantial development permit" process to be followed among the counties bordering the Columbia R. We believe that both Path A and B contain undefined and potentially inconsistent standards and criteria and fail to provide counties sufficient funds to coordinate and administer new programs likely resulting in delays in the provision of necessary public services.

The substantial development permit exemption provisions of the SMA are contained in statute at RCW 90.58.030 and in WAC 173-27. The statutory provisions cannot be changed by adoption of a WAC and WAC 173-27 is not being amended. The SMA provides local government wide latitude to establish local systems for management of permitting and project review under the SMA. The standards of the guidelines are necessarily broad as they must address state wide conditions and circumstances. The local SMP will be more specific. Provision of funding is beyond the authority of Ecology. This issue can only be addressed by the Legislature. Ecology is supporting a proposal for appropriation of funds for local SMP updates that will be before the legislature in 2001.

250(3) Shorelines of statewide significance

This section should be re-written to require specific measurable standards that provide the greatest level of protection for fish, shellfish, and wildlife habitat areas.

Strict one-size-fits-all quantitative standards are avoided because they would limit the ability to adapt to special situations or revise management for improved information.

250(3)(a)

DOE, a state agency, should have responsibility for defining what "state-wide interests" are in shorelines of statewide significance. Who better than a state agency to determine statewide interests? The next paragraph, (b) in this section, talks about preserving shorelines for future generations. Perhaps that's a statewide interest.

The intent of Section 250 is to provide guidance to local governments on how to ensure protection of the statewide interest as expressed by the legislature and the people of the state in adopting the SMA. Subsection (a) calls for local government to consult with state agencies and other interest groups. It would not be appropriate for Ecology alone to determine the statewide interest.

250(3)(d)

Add "kelp and eel grass" to the list of key resources in (d)(i).

Ecology respectfully declines this suggestion because the list in question is a non-exclusive list of examples.